

HINDU LAW OF ENDOWMENTS.

Tagore Law Lectures, 1892.

THE HINDU LAW
OF
ENDOWMENTS.

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PREFACE.

THE delay in publishing this volume calls for a word of explanation. It is due to a series of misfortunes that have befallen me ; and I have every hope that when I have related to the public what these misfortunes are, the public, in its generosity, will overlook the delay.

Before the author of this volume, my late lamented father, could see it through the press, he was cut off by an untimely death in October 1892. As soon as we could somewhat recover from this severe shock, my uncle, the late Babu Biswambhur Nath Pundit, exerted all his energies to place in the hands of the public, as early as he could, this work of his lamented brother, which occupied the closing days of his life. But with the best portion of his time occupied in his own law-studies and pressed down with the cares of his bereaved family it must be confessed that the work did not progress as quickly as he wished it to do. But to crown the misfortunes of his sorrowing family, my uncle, too, met with an untimely death in December last. Crushed by these misfortunes, myself scarcely out of teens, with my

studies and the affairs of my family to engage my time and attention, I had little hope of placing this volume before the public, but for the kindly help of Babus Girija Sankar Majumdar, Vakil, High Court, and Provash Chandra Mitter, M.A., B.L., to whom I hereby return my best thanks. In conclusion, I again beg the public to consider the unfortunate circumstances related above and to overlook the delay in publishing this volume.

SHAMBHU NATH PANDIT STREET, }
BHOWANIPUR :
Dated the 10th of September, 1897.

SHYAM SUNDAR PANDIT.

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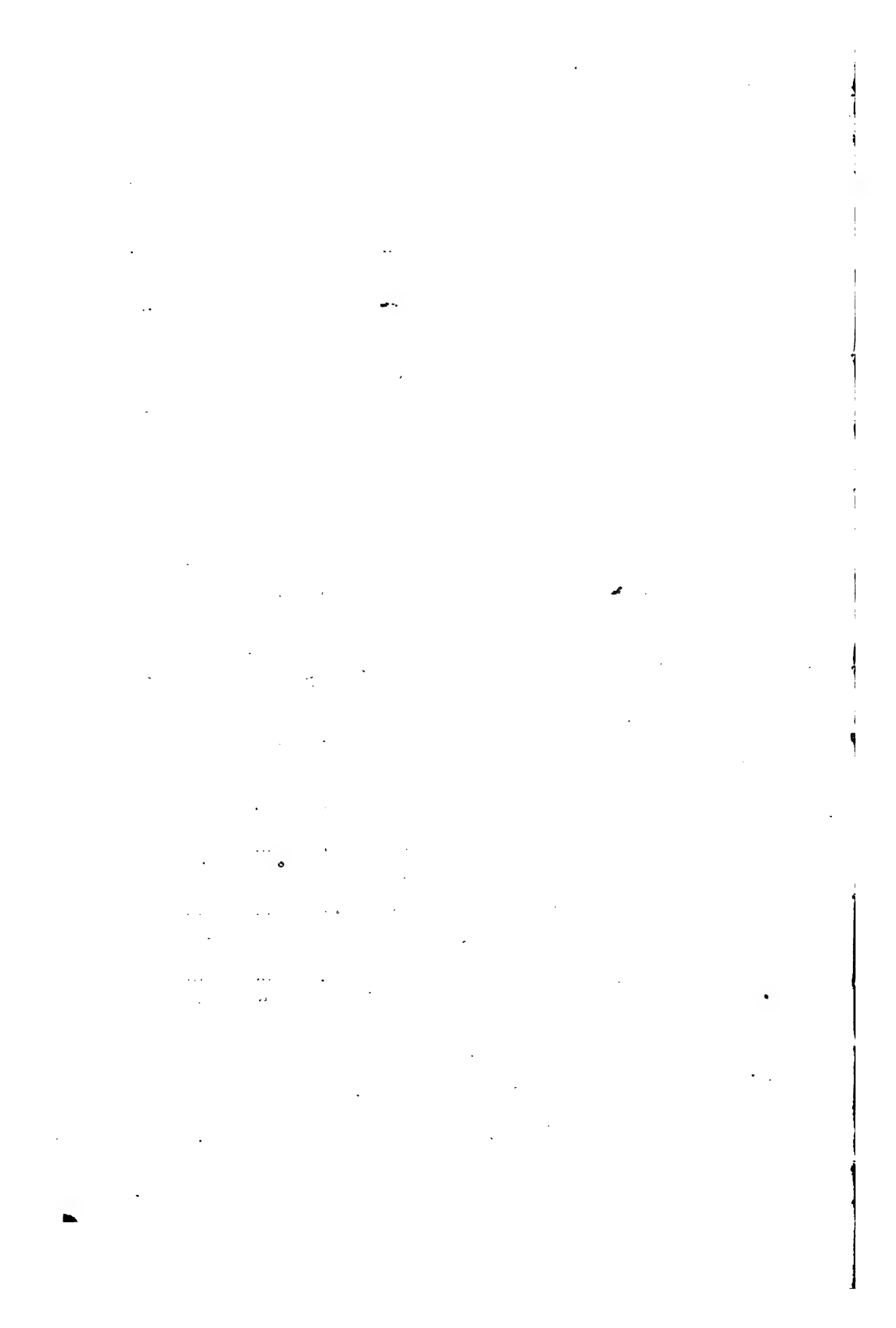
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THE HINDU LAW OF ENDOWMENTS.

CHAPTER I.

(Lectures I and VIII.)

ON THE AIMS AND OBJECTS OF HINDU ENDOWMENTS, 'ISHTA' AND 'PURTTA.'

Derivation and meaning of '*endowment*,' 1; legal meaning of '*charity*,' 2; *charitable objects* enumerated in the Statute of Elizabeth, 3; the meaning extended to all objects of *public trust*, 4.—HINDU ENDOWMENTS: no artificial definitions,—the modern and popular sense of the word,—absence of native or foreign treatises,—the substantive law unaffected by British legislation,—effect of the British Laws of revenue, evidence and procedure, 5.—Necessity of further Legislation,—Regulation XIX of 1810 repealed by Act XX of 1863; Sec. 539 of the Civil Procedure Code and Act VI of 1890 not adequate, 6.—HINDU MOTIVES FOR ENDOWMENTS, Sir Thomas Strange's view questioned, 7; false analogy with death-bed alienations forbidden by the Statutes of Mortmain, 8; Mayne's prejudice against Brahmins and its cause, 9; the Mortmain Act not applicable to India, but its object secured by the Indian Succession Act, 10.—THE ORIGIN OF THE HINDU SYSTEM OF ENDOWMENT, Vedas the revelations of the Hindus and source of all law; canonical precedence of *Sruti* over *Smriti*, 11; ancient doctrine of suppositious texts of *Sruti*, inference of 'law' from 'usage,' 12; historical grounds for the examination of the Vedas, 13; germinal ideas of the *merits of charity* in the Rig Veda, meaning of 'gift' expounded by Max Müller and Wilson, 14; the positive merit and negative benefit of gifts, 15; gifts not for the aggrandisement of the Brahmins, 16.—The division of all pious works into ISHTA and PURTTA, 17.—Enumeration of ISHTA works, 18; the Vedic notion of hospitality, 19; Apastamba and Baudháyana on hospitality, 20; the duties of *panchayagna*, 21; the guest as a divinity, 22; institution of guest-houses, 23.—Enumeration of PURTTA works; hospitals, 24.—Gifts for the advancement of learning, 25.

1. THE subject allotted for the present course of lectures is the Law of Hindu Endowments. The English verb, ^{Etymology of} 'endowment.'

to endow, is derived from Norman-French *endouer*, from French *douer*, which again traces its derivation to the Latin verb *dotare*, to endow, from *dos*, marriage portion, dowry.¹ As might be expected from its etymology the word endowment originally signified the bestowing or assuring of dower on a woman.² As the Church is metaphorically spoken of as the *bride of Christ*, by an extension of the metaphor the word endowment came to denote the settling a provision upon a parson, or building of a church or chapel; and the severing a sufficient portion of tithes, etc., for a vicar, towards his perpetual maintenance, when the benefice is appropriated. Examples of the use of the word in this sense will be found in the Statutes 15 *Richard II*, Ch. 6, and 4 *Henry IV*, Ch. 12.

Its extended meaning.

'Charity' explained.

2. By analogy the word gradually acquired an extended meaning, including, as in the Charitable Trusts Act, 1853, all property, real or personal, "which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof."³ The word charity again has a technical meaning in English legal literature. To use the words of Grant, M. R., in *Morice v. Bishop of Durham*,⁴ "that word in its widest sense denotes all the good affections men ought to bear towards each other; in its most restricted and common sense, relief of the poor. In neither of these senses is it employed in this Court. Here its signification is chiefly derived from the Statute of Elizabeth. Those purposes are charitable which the Statute enumerates, or which by analogies are deemed within its spirit and intendment; and to some such purpose every bequest to charity generally shall be applied." This indeed is the meaning legally attached to charity by the Charitable Trusts Act of 1853 and its amending Act of 1855.⁵

¹ Webster, and Maine's Early History of Institutions, pp. 337-8.

² Tomlins' Law Dictionary, 4th edition.

³ 16 and 17 Vict., c. 137, sec. 66.

Tudor's Charitable Trusts, 3rd edition, p. 532.

⁴ 9 Ves. at p. 405. Ditto, p. 1.

⁵ 16 and 17 Vict., c. 137, sec. 66.

18 and 19 Vict., c. 124, sec. 48.

3. The charitable objects are enumerated as follows in the preamble to the Statute of Elizabeth¹ :—"The relief of aged, impotent, and poor people ; the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities ; the repair of bridges, ports, havens, causeways, churches, sea-banks, and highways ; the education and preferment of orphans ; relief stock, or maintenance for houses of correction ; marriages of poor maids ; supportation, aid and help of young tradesmen, handicraftsmen, and persons decayed ; the relief or redemption of prisoners or captives ; and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes."

What are 'charitable objects'?

4. With the progress of society many other objects not so enumerated have been judicially declared to be charitable "within the meaning, purview, or interpretation" of the Statute of Elizabeth. Thus gifts for the advancement of learning or of religion or for any public and general purpose have been held to be charitable within the spirit and intendment of the Statute.² Indeed, the final result of the English decisions has been to make the expressions public trust and charitable trust synonymous.³

Charitable trust same as public trust.

5. In dealing with HINDU ENDOWMENTS we are not fettered by any artificial definitions. For our purposes the word will be taken in its modern popular sense, namely, any property dedicated for religious or charitable purposes. The subject, indeed, is one of some difficulty in the absence of any appreciable aid to be derived from systematic treatises of native or foreign composition. The history of the Hindu religion has formed the subject of erudite and careful research at the hands of European scholars whose names are familiar as household words in India ; the religious books of the Hindus have—many of them—been published and some of them translated, and accurate accounts have been published from time to time of the

Hindu endowments undefined.

No Special treatise.

¹ 45 Eliz., c. 4. Tudor's Charitable Trusts, p. 1.

² Ditto, pp. 1, 5, 6, 11.

³ Ditto, p. 2.

Sources from which the law is to be gleaned.

Effect of current enactments.

Sovereign's duty to prevent misappropriation.

Fresh legislation necessary.

numerous sects into which the followers of the Hindu religion are now divided. The Law of Endowments does not form the subject of any separate treatise or chapter, but has to be diligently searched out in the midst of the whole field of Sanskrit Literature, vast even in its survival, and has to be supplemented by the judicial decisions of British Courts for the last century and a quarter. A century of British legislation has made very little change in the subject-matter under consideration. Laws of revenue have imposed fees on the documents creating endowments ; laws of evidence have dictated their being recorded in the public offices, and laws of procedure have prescribed the particular mode in which remedies should be pursued ; but the substantive law may on the whole be said to have remained unaffected by legislative enactment.

6. The important duty of every Government to provide that endowments for pious and beneficial purposes be applied according to the real intent and will of the grantor was early recognised by the British administration, and Regulation XIX of 1810 was the beneficent outcome of this conviction. This regulation was instrumental in saving many of the native endowments from ruin and misappropriation until religious scruples led to its repeal by Act XX of 1863. The organisation intended to be provided by the latter Act to continue the good work of the Superintendents and local Agents of former times, was inherently weak and has died a natural death, with the disastrous result that it is practically impossible to compel the managers of endowments to perform their allotted duties with honesty and faithfulness. The cumbersome and costly procedure of a suit under section 539 or under the general provisions of the Civil Procedure Code is an inadequate remedy for the serious disease which has attacked many of our endowments, and the recently-passed Charitable Endowments Act No. VI of 1890 does not affect exclusively religious institutions and is for the most part of a permissive character.

7. The frequency and magnitude of the gifts made by Hindus for pious purposes naturally attracted the early attention of those Englishmen who had to administer their affairs. Thus Sir Thomas Strange, writing to Colebrook in 1812,¹ observed that in all the wills made by Hindus of Madras "a great proportion of the property is bequeathed to superstitious uses." The religious habit is truly recorded, but when the learned writer proceeds to state that "the proportion is commonly in the ratio of the iniquity with which it has been acquired or of the sensuality or corruption to which it has been devoted—*sic hi non ipsis mellificant*—I would rather see it distributed in their families," he seems to be treading on less firm ground if he means to suggest that the said Hindu endowments are peculiarly the products of repentance by sinners of various degrees. In all systems of religion recognising the existence of an after-life, the distinctions of vice and virtue, and the possibility of atoning for the past errors of life by repentance and good deeds, it is but natural to expect that on the approach of death a man should search his life and seek to make peace with his Maker by assigning his departing wealth for such purposes as might, according to his lights, expiate his faults and increase his merits. As to the suggestion that the proceeds of iniquity contribute towards the creation of religious endowments there is a text of Manu,² which promises bliss for the performance of religious and charitable acts "with riches honestly gained." The Hindu religion therefore does not hold out any inducement to its votaries to earn riches by vice and then to spend a portion of the same in expiating for the

Hindu motives for endowment.

An unmerited reproach.

Desire for expiation natural, but Hinduism no encourager of vice.

¹ Hindu Law, London, 1830, Vol. II, p. 453.

² Institutes of Manu, IV, 226.

अदयेष्ट पूतं नित्यं कुर्यादतन्मृतः ।
अदाहवेऽचये वे भवतः स्वामतैर्धने ॥

२२६ ॥

"Let each wealthy man continu-

ally and sedulously perform sacred rites (इष्टं) and (perform पूतं, i.e.) consecrate pools or gardens with faith; since these two acts (इष्टापूतं) accomplished with faith and with riches honestly gained, procure an unperishable reward."

iniquities which led to the acquisition. There is a common Bengali proverb of bestowing a shoe after slaughtering a cow, which well expresses this view of the transaction. The Shasters do not grant absolution for the killing of the cow by the gift of a shoe made from its hide.

Probable cause
of Sir T.
Strange's
wrong notion.

8. It might well be surmised that Sir Thomas Strange's mind was unconsciously influenced by the existence, up to recent times, in his own country, of an analogous state of things which necessitated the passing of special laws to nullify charitable bequests by dying persons. Although the old Statutes of Mortmain were principally dictated with the political object of preserving the feudal services due to the Crown and the feudal aristocracy, the avowed policy of the Georgian Mortmain Act of 1736 was to strike at the growing practice of death-bed alienations by moribund sinners. The preamble to the Statute recites that "gifts or alienations of lands, tenements, or hereditaments in Mortmain are prohibited or restrained by Magna Charta and divers other wholesome laws, as prejudicial to and against the common utility; nevertheless this *public mischief has of late greatly increased by many large and improvident alienations or dispositions made by languishing and dying persons or by other persons to uses, called charitable uses, to take place after their deaths to the disherison of their lawful heirs.*"¹ According to a distinguished cotemporary Judge, the reason of the Statute was "to hinder gifts by dying persons out of a pretended or mistaken notion of religion, as thinking it might be for the benefit of their souls to give their lands to charities, which they paid no regard to in their lifetime."²

Influence of
priests exaggerated by
Mayne.

9. It is observed by Mayne that "gifts for religious and charitable purposes were naturally favored by the Brâhmanas, as they are everywhere by the priestly class,"³ and in connection therewith he quotes the text of Sankha

¹ 9 Geo. II, c. 36. Boyle, p. 71.

² Lord Hardwicke, in *Attorney-General v. Lord Weymouth*, Amb.

³ Boyle, p. 71.

⁴ Hindu Law and Usage, page 459, para. 393.

that "wealth was conferred for the sake of defraying sacrifices."¹ Vishwa Nath Narayan Mandlik objects to this genesis of Hindu endowments and traces the same to the common feelings of human nature, namely, charity and the desire to acquire religious merit. It seems to me that Mayne has been led away to some extent by the ordinary vituperations against the Brahmins as the authors of all evil, which the preachers of the Gospel were the first to forge, and by the association of ideas with what actually occurred in England in olden times and led to the passing of the Mortmain Acts. In the case of *Attorney-General v. Day*,² Lord Hardwicke declared that in passing the Georgian Mortmain Act the Legislature had it particularly in view "to prevent persons in their last moments from being imposed on to give their real estates from their families," which view to his Lordship's mind was a very wise one; "for by that means, in times of popery, the clergy got almost half the real property of the kingdom into their hands; and indeed he wondered they did not get the rest, as people thought they thereby purchased Heaven. But it was so far from being charity or piety, that it was rather a monument of impiety and of the vanity of the founders."

Charity and piety, the true incentives.

Probable reason for Mayne's prejudice against Brahmins.

10. I may here observe in passing, that the Georgian Mortmain Act provided among other things that no transfer of real property or of personal estate for investment in real estate "*in trust or for the benefit of any charitable uses whatsoever*"³ should be valid unless made with certain formalities,—"*twelve calendar months at least before the death*" of the transferor; and similarly no transfer of stocks in the public funds for the same purposes was to be valid "unless such stocks be transferred in the public books, usually kept for the transfer of stocks, six calendar months at least before" the

Statutory provisions against death-bed endowments.

¹ Quoted from Colebrooke's Digest, Vol. 3, p. 484.

² 1 Ves. Sen. 223. Boyle, pp. 70-71.

³ 9 Geo. II, c. 36, sec. 1. Boyle, pp. 71-72.

transferor's death. These provisions have been repeated in the existing English Law on the subject, the Mortmain and Charitable Uses Act, 1888.¹

The Statutes of Mortmain not applicable to India;

In the celebrated case of the *Mayor of Lyons v. The East India Company*,² the question was raised whether the Statutes of Mortmain extended to India, and decided in the negative, principally relying on the *ratio decidendi* of Sir William Grant in *Attorney-General v. Stuart*,³ where it was held "that the Statute of Mortmain does not extend to the colonies governed by the English Law, unless it has been expressly introduced there; because it had its origin in a policy peculiarly adapted to circumstances of the mother country." In the concluding portion of their judgment, the Judicial Committee remark that the question on the Mortmain Act cannot be said any longer to exist in the cause. It is agreed, on all hands, that the Statute does not apply to India." This part of the object of the Statute,

but Act X of 1865 has similar provisions.

however, is secured by section 105 of the Indian Succession Act, X of 1865, to those subjects of Her Majesty in India who are not Hindus, Mahomedans or Buddhists: "No man having a nephew or niece, or any nearer relative, shall have power to bequeath any property to religious or charitable uses, except by a will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the wills of living persons."

Origin of Hindu endowments traced to Vedas, which should be examined;

11. The present system of Hindu endowments is the evolutionary product of the religious history of the people from the most ancient times. Its roots can be traced back even to the Vedas. A writer on any branch of the Hindu Law is bound to investigate the Vedas for any indications

¹ 51 & 52 Vict., c. 42, sec. 4, cl. 6-9. Tyssen's Charitable Bequests, p. 555.

² 2 Mer. 161 (also quoted in argument in Morton, p. 109), Moore's I. A., Vol. I, p. 271.

³ Moore's I. A., Vol. I, p. 175.

however embryonic of the subject-matter under consideration. By the theory of the Hindu religion, the Vedas are a direct Revelation by the Supreme Deity, if not a pre-existent entity. The former doctrine is countenanced by the *Purusha-sukta* of the Rig Veda, reciting the origin of "the hymns called Rich and Sáman, the metres and the Yajush" from the universal sacrifice offered by the gods.¹ The latter doctrine is alluded to in the account of the Creation in Manu,² where the Supreme Spirit is said to have "first assigned to all creatures distinct names, distinct acts, and distinct occupations, as they had been revealed in the pre-existing Vedas," and it is expressly laid down by Parásara (I, 20), who declares that there is no creator of the Vedas,—Brahmá is only the rememberer of the Vedas :

“न कश्चिद् वेदकर्ता च वेदस्मर्ता चतुर्मुखः ।”

It is therefore but natural that they should be looked upon as the source of all law. “The Veda,” says Gautama, “is the source of the sacred law.”³ “The sacred law,” says Baudháyana, “is taught in each Veda.”⁴ Similarly, Vasistha premises that the sacred law has been settled by the revealed texts.”⁵ Manu declares “the whole Veda” to be the first “root of law,”⁶ and later on the same sage enumerates the Veda as the first of the four

¹ तस्माद् यज्ञात् सर्व्वेभ्यः ऋचः
सामानि जज्ञिरे ।

इन्द्रांसि जज्ञिरे तस्माद् यजुस्तस्मा-
दजायत ॥

Rig Veda, X, 90-9. Muir, Vol. V, p 371.

² सर्व्वेषां नामानि कर्म्मणि च
प्रयक् प्रयक् ॥

वेदशब्देभ्य एवादौ प्रयक् संख्या च नि-
र्गमे ॥

Manu, I, 21.

³ Institutes of Gautama, I, 1. Müller, S. B. E., Vol. II, p. 173.

⁴ Institutes of Baudháyana, I, 1, 1, 1. Müller, S. B. E. Vol. XIV, p. 143.

⁵ Institutes of Vasistha, I, 4. Müller, S. B. E., Vol. XIV, p. 1.

⁶ वेदोऽखिलो धर्मसूत्रं स्मृतिशौचे
च तद्विद्वान् ।
आचारश्चैव साधूनामात्मनस्तुष्टिरेव च ।
Manu II, 6.

manifest authorities on law.¹ The same enumeration occurs in the Institutes of Yajnavalkya almost in the same words :—

and the best
canonical
authority.

“The *Sruti* (Veda), the *Smriti*, the practice of good men, what seems good to one's self, and a desire maturely considered ; these are declared to be the root of law.”²

The same priority in enumeration is accorded to the Veda over the *Smriti* in the Dharma Sutras of Gautama, Baudhāyana and Vashistha ; and in the Mahābhārata, it is said : For those who desire to know the law, the *Sruti* is the best authority ; the Dharma Śāstra is the second, and the third the practice of (good) men.³ Vignāneshwara, in commenting on the above sloka of Yājñavalkya, remarks that in case of conflict, the above authorities have precedence in the order of their enumeration.⁴ The canon here laid down is so well known amongst Hindu jurists that the learned commentator did not consider it necessary to cite any text in support thereof ; but if any authority were required it would be sufficient to refer to the *Aphorisms of Jaimini*, where it is laid down that a *Smriti* opposed to

¹ वेदः स्मृतिः सदाचारः स्वयं च प्रियमात्मनः ।

एतच्चतुर्विधं प्राज्ञः साक्षादर्थक्यं कथयत्युच्यते ॥

Manu II, 12.

Sir William Jones's rendering of the words साक्षात् and स्वयं is erroneous. Compare his translation—“(These) the wise have openly declared to be the quadruple description of the juridical system,” with Bühler's “(These) they declare to be visibly the four-fold means of defining the sacred law.”

² स्मृतिः स्मृतिः सदाचारः स्वयं च प्रियमात्मनः ।

सम्यक्-सङ्कल्पजः कामी धर्मवृत्तिभिर्दृष्टम् ॥

Mitāksharā, A'chāra, 7.
Röer and Montriou, p. 3.

³ धर्मो जिज्ञासमानानां प्रमाणं परमं स्मृतिः ।

द्वितीयं धर्मशास्त्रं तृतीयं लोक-
सङ्गतिः ॥

Mahābhārata, Anushāsana-
parva.

⁴ “एवेवाग्निरोधे पूर्वं पूर्वं वस्तीय-
स्मृत्यः ।”

Mitāksharā, A'chāra, leaf 2-1,
line 11.

Sruti is no authority.¹ Vyāsa in his Institutes declares that where there is a conflict of authority between the Sruti, Smṛiti and the Puranas, there the Sruti is the authority to be followed,² and the same doctrine is enjoined in a Smṛiti text quoted in the *Prayoga Pārijāta* :

“स्मृते वेद-विरोधे तु परित्यागो यथा भवेत् ।

तथैव लौकिकं वाक्यं स्मृतिवाधे परित्यजेत् ॥”

(Vidyāsāgar's Vidyabā Vivāha, p. 213.)

12. Indeed, the very conception of the Smṛiti as a memory or tradition among the sages implies the supremacy of the Veda, for the tradition is authoritative not by itself but as a tradition of the Veda. The Manu Samhita claims pre-eminence for itself on account of the universality of Manu's knowledge,³ which according to *Kulluka* enabled Manu to embody the purport of many Vedic texts which are now lost or disarranged, and the same ground is urged by *Vṛihaspati* in a text quoted by *Kulluka* in his commentary to the opening sloka of the Manu Samhita. (*Vide* Mathuranath's Edition of Manu Samhita. —“*Vṛihaspati*, too, says:—The superiority of Manu is

Doctrine of
suppositious
Vedic texts.

¹ धर्मस्य शब्दसूत्रात् अशब्द-
जनपदं स्यात् । १

तत्र श्रौतं प्रमाणम् तयोर्द्वे स्मृति-
र्व्येरा ॥

Vyāsa Sanhitā, 1, 4.

अपिवा कर्तुं सामान्यात् प्रमाणमनुमानं
स्यात् । १

² यः कश्चित् कस्यचिदर्थो मनुना
परिकीर्तितः ॥

विरोधे जनपदं स्यात् असति अनु-
मानम् । १

स सर्वोऽभिहितो वेदे सर्वज्ञानमयी
वि सः ।

Manu II, 7.

Mimāṃsā Darsana, Adhyāya I,
Pada III, Sutra 1, 2, 3.

Bibliothica Indica ed., Vol. I,
pp. 64-66.

² श्रुतिस्मृतिपुराणां विरोधो
यत्र दृश्यते ।

Sir William Jones is wrong to render *sarvajñanamayah* by “perfect in divine knowledge,” while it plainly means that the sage was “omniscient.” Govindarāja thinks it to be an attributive of the Veda itself.

ordained by reason of his having explained the purport of the Vedas ; the Smṛiti is not approved which is contrary to the meaning of Manu.”) This doctrine of suppositious texts of Śruti corresponding to existing Smṛiti texts is an ancient and well-known doctrine. It is laid down in the *Aphorisms of Jaimini* to which I have already referred. The identical doctrine is thus introduced by *Āpastamba*,¹ in his Dharma Sūtra, after reproducing apparently conflicting texts of the Śruti as to the propriety or otherwise of reciting Vedic hymns “when it thunders, when lightning flashes or thunderbolts fall, and when the wind blows violently” :—

“If that is done, (if the passage of the Vāgasaneyi-Brāhmaṇa is combined with that quoted in Sūtra 5, the former stands) not in contradiction with the decision of the Āryas. (6.)

“For they (who know the law) teach both the continuance and the interruption (of the daily recitation of the Veda). That would be meaningless, if one paid attention to the (passage of the) Vāgasaneyi-Brāhmaṇa (alone). (7.)

“For no (worldly) motive for the decision of those Āryas is perceptible ; (and hence it must have a religious motive and be founded on a passage of the Veda.) (8.)

“(The proper interpretation, therefore, is, that) the prohibition to study (given above and by the Āryas generally), refers only to the repetition of the sacred text in order to learn them, not to their application at sacrifices. (9.)

“(But if you ask, why the decision of the Āryas presupposes the existence of a Vedic passage, then I answer) : All precepts were (originally) taught in the Brāhmaṇas, but these texts have been lost. (10.)

“Their (former existence) may, however, be inferred from usage.” (11.)

¹ Institutes of Āpastamba. Müller, S. B. E., Vol. II, p. 46-47.

The following comment by Haradatta¹ to the last Sutra Law inferred from usage. is very pertinent :—

“How, then, is their existence known?”

“They are inferred from usage.” “Usage” means the teaching of the law-books and the practice. From that it is inferred that Manu and other (authors of law-books) knew such text of the Brâhmanas. For how could otherwise (*Rishis* like Manu) teach in their works or practise (such customs) for which no authority is now found? And certainly they were intimately connected with the revealed texts (*i.e.* saw them).

13. The canonical ground, however, is not the only one Historical grounds for examining Vedas. which invites an examination of the Vedas in connection with any question of Hindu Law or Usage. Their importance is equally great upon historical grounds as representing the most ancient literature of which we possess written records not only for India but for the whole human race. There cannot be any doubt that most of the European Sanskritists have approached the problems of ancient Indian history with a strong bias, conscious or unconscious, against the antiquity of Indian works on account of the supposed exigencies of the chronology of the Old Testament. Notwithstanding, however, the discrediting of the colossal chronologies of the Puranas the dates approximately assigned to the Vedas by occidental scholars are ancient enough to satisfy the *amour propre* of any nation whatsoever and to kindle a desire for research in every enlightened mind. I take it, therefore, as established on either ground, that an examination of the Vedas in connection with our present subject will be both interesting and useful. The actual facts discovered might be very few, but in exploring such fields we would be in the position of the geologist patiently sifting the dust of ages in ancient beds, thankful if mere fragments of fossil bones should be discovered, wherewith he could in his imagination conjure up into life a dead and vanished world

¹ Institutes of Āpastamba. Müller, S. B. E., Vol. II, p. 47, note.

and trace the gradual evolutions of those strange organisations into the living types which now surround us on all sides

Germinal ideas
of merits of
charity.

14. The Rig Veda contains passages extolling the merits of charity. One of them is thus translated by Max Müller :¹ "He who gives alms goes to the highest place in heaven." A fuller translation is given by Wilson in the second volume of his translation of the Rig Veda :²—

"He who propitiates (the gods), gives to the gods, and sits at ease upon the summit of heaven : to him the flowing waters bear their essence ; to him this fertile (earth) ever yields abundance." (5.)

"These wonderful (rewards) verily are for those who give (pious) donations : for the donors of (pious) gifts the suns shine in heaven : the givers of (pious) donations attain immortality : the givers of (pious) gifts prolong their worldly existence." (6.)

Two meanings
of 'dakshina.'

It will be seen that the two translators differ in the meaning to be attached to gifts, namely, whether the word should be taken in the general sense of alms or in the special sense of religious donations. The former is the literal meaning, although the latter is the interpretation favored by the great exegetist Sáyana. It can easily be conceived how the original conception should gradually receive a strong religious tincture as much from the general progress of ideas in that direction as from the accident of the use of the word *dakshina* for donations in the 6th verse, a word which in later Sanskrit literature is prominently used to denote a present made to Brahmins upon solemn or sacrificial occasions. The context, in the case under notice, is, however, more secular than religious, as the gifts extolled in the hymn³ are those conferred on the poet by a king who had taken a fancy for him and married him to the king's daughters.

¹ Rig Veda I., 125, 5-6, cited in Chips from a German Workshop, Vol. I, p. 46.

² London, 1854, pp. 15-16.
³ Wilson's Rig Veda, Vol. II, p. 14.

15. The passages in the later sacred writings of the Hindus extolling the efficacy of gifts as inducing positive merit or as procuring negative benefit in the sense of expiating for evil actions may all be traced to the above germs. Hemádri in the opening chapter of the *Dána-khandam* of his encyclopedic work quotes a text of the *Satapatha-Brahmana* enjoining in the same breath the practice of *dama* (self-restraint), *dána* (liberality), and *dayá* (compassion).¹

This seems to be the source of inspiration for the text of *Vrihaspati*² :—

तपो धर्मः कृतयुगे ज्ञानं चैतायुगे स्मृतं ।

हापरे चाध्वराः प्रोक्ताः कलौ दानं दया दमः ॥

“In the *Krita Yuga* the prevailing virtue is declared to be religious austerity ; in the *Treta*, divine knowledge ; in the *Dwápara*, sacrifices ; and in the *Kali Yuga*, charity (दानं), compassion (दया) and restraint of passions (दमः).”

Manu, however, beginning with the use of almost identical words, constitutes charity alone the supreme virtue in the degenerate *Kali Yuga* :—

तपः परं कृतयुगे चैतायां ज्ञानमुच्यते ।

हापरे यज्ञमेवाहुर्दानमेकं कलौ युगे ॥³

“In the *Krita Yuga* the prevailing virtue is declared to be religious austerity ; in the *Treta*, divine knowledge ; in the *Dwápara*, sacrifices ; in the *Kali Yuga*, charity alone.” *Adhyáya* I, sloka 86. The same sloka is repeated by *Parásara* in his *Institutes*, I, 22.⁴

¹ अथार्थे शतपथ श्रुतिः । तदेतत्
अयं शिष्येत् दमं दानं दयामिति ॥
Hemádri, *Dána-khandam*. Bib.
Ind., p. 6.

² Quoted in Hemádri, *Dána-khandam*, Bib. Ind., p. 6.

³ *Institutes of Manu*, I, 86. Quoted in the *Dána-chandriká* as a

text of Vyása. अथ युगप्रधान्येन
आसीत्ता धर्मा उच्यन्ते । तपः परं
कृतयुगे चैतायां ज्ञानमुत्तमं । हापरे
यज्ञमित्याहुर्दानमेव कलौ स्मृतम्
इति ॥ Leaf 98.

⁴ Jagamohan's edition, p. 5.

Yama declares charity to be the special virtue to be practised by householders, *grihasthas* :—

यतीनान् शुभो धर्मस्त्वनाहारो वनौकसा ।

दानमेव गृहस्थानां शुश्रूषा ब्रह्मचारिणां ॥¹

According to *Vyāsa*² :—

“What thou givest to proper persons and what thou consumest day to day, that I consider to be thy wealth ; the remainder thou preservest for some other person ;” and in another passage the same sage³ quaintly observes :—

अदाता पुनश्च स्वागौ धनं सन्त्यज्य गच्छति ।

। दातारं कृपणं मन्ये मृतोऽप्यर्थं न मुञ्चति ॥⁴

“The man who giveth not in charity is truly liberal, for he departs (this life) leaving his wealth behind him. The charitable man, methinks, is the real miser ; he does not leave his wealth even after death,” *i.e.* to say, he continues to benefit by his wealth even in the next world.

negative bene-
fit as an atone-
ment.

*Gautama*⁵ in his Institutes, XIX, 11, mentions the giving of gifts as one of the means for expiating blamable acts, and in Sutra 16 he gives further details thus :—

“Gold, a cow, a dress, a horse, land, sesamum, clarified butter, and food are the gifts (which destroy sin).”

Manu in his Institutes, Adhyāya V, sloka 107, declares that those who have performed forbidden acts are purified by charity; and in another text of the same sage quoted by Jagannatha in his Digest,⁶ Book I, Chap. V, sec. III, verse 206, alms-giving is enumerated in the same connection :—

“By open confession, by repentance, by devotion, and by reading the Scripture, a sinner may be released from

¹ Jagamohan's edition, p. 5.

² Quoted in Hemādri, *Dāna-khandam*, Bib. Ind., p. 6. Also quoted with a slight variation in the *Dānachandrikā* : यतीनां परमोधर्म

&c., leaf 98.

³ Quoted in Hemādri, *Dāna-khandam*, Bib. Ind., p. 5.

⁴ Quoted in Hemādri, *Dāna-khandam*, Bib. Ind., p. 7.

⁵ Müller, S. B. E. Vol. II, p. 272.

⁶ Colebrook's Digest of Hindu Law, Madras reprint, Vol. I, p. 214.

his guilt ; or by alms-giving, by dominion over the senses, or by a fine to the king (for the word *dama* admits both senses)."

As Sudras are incapacitated from resorting to some of these means, charity is the sovereign expiation for them. Thus Āpastamba having laid down the several means for the twice-born (*dvijas*) to be purified from contact with a *chāndāla* under certain circumstances, proceeds¹ :—

"How is the penance to be performed for a person of the fourth caste? He has neither *vrata*, nor *tapa*, nor is there *homa* for him. The *panchagavya* cannot be given to him, as he is disqualified from hearing the sacred texts. A Sudra is purified by almsgiving after confessing his sins before Brahmins." And in a similar connection Parāsara² says :—"There is no fasting for the Śudra ; he is purified by alms given."

16. It is aptly pointed out by Mandlik that it is unfair to charge the Brahmins with the manufacture of these precepts for the aggrandisement of their own class when their ancient writers discouraged the reception of gifts and laid down minute directions as to the class of persons on whom the gifts were to be bestowed. Thus, for instance, Yajñavalka³ declares that "a gift should not be accepted by one who is destitute of learning and austerities. Where observance and these two dwell, that is declared to be the fit recipient [of charity], and again :—

"He who being able to accept, does not accept a gift, attains the several worlds which the charitably disposed [attain by their gifts]."⁴

A Brahmin is enjoined on his own part to give alms and perform other acts of charity. Atri in his *Smṛiti Samhitā*⁵

¹ Āpastamba Samhitā, Adhyāya V, slokas 4-5.

² Institutes, XI, 26 :—

शुद्राणां नीपवासः स्यात् शुद्रो दानेन

शुध्यति

³ Institutes, chap. I, sl. 202. Mandlik, p. 186.

⁴ Institutes, chap. I, sl. 213. Mandlik, p. 187.

⁵ Sloka 13.

specifies charity as one of the duties (*Karma*) of the Brahmin, and the reception of charity as one of his lawful means of livelihood (*Vritti*), and the same is very clearly put by Manu in his Institutes, I, 88 :—

To Brahmins he assigned the duties of reading the Veda, of teaching it, of sacrificing, of assisting others to sacrifice, of giving alms, *if they be rich*, and, *if indigent*, of receiving gifts."

Pious works
classified into
(1) *Ishta* and
(2) *Purttā*.

17. From very ancient times the sacred writings of the Hindus divided works productive of religious merit into two divisions named *ishta* and *purttā*, a classification which has come down to our own times. So much so that the entire objects of Hindu endowments will be found included within the enumeration of *ishta* and *purttā* works. In the Rig Veda¹ *ishtāpurttam* (sacrifices and charities) are described as the means of going to heaven. In commenting on the same passage Śāyana explains *ishtāpurttā* to denote "the gifts bestowed in *Srauta* and *Smarta* rites." In the *Taittiriya Aranyaka*,² *ishtāpurttā* occur in much the same sense, and Śāyana³ in commenting on the same explains *ishta* to denote "Vedic rites like *Darsa*, *Purnamāsa*, &c., and *purttā* "to denote *Smārta*, works like tanks, wells, &c." A text of Manu quoted by Hemādri seems, however, to give the purely sacerdotal meaning of the phrase:—"What is given as *dakshinā* (gift to the priest) and the like when the *yajna* (sacrifice) has been performed is *ishta*. The gift that is given outside the *vedi* (altar) is *purttā*."⁴ Another text of Manu, quoted by Mahes-

¹ Mandala, X, 14, 8.

² Prapathaka, X, Anuvāka 1, 6.

इष्टापत्ते वज्रपा जातमित्यादि ।

• Sayana : इष्टं इष्टपूर्वमासादि
जीतं कर्म, पूजवापिर्ज्ञापादि स्मार्तं कर्म ।

• Hemādri Dānakhandam, Bih.
Ind., p. 7.

इष्टे यज्ञे दक्षिणे दक्षिणादि तदर्थेऽर्चनं

वशिर्वेदि च यदामं दीयते तत्
पौर्णिकं ॥

Cf. Vyāsa quoted in Sudrakama-
lākara, leaf 64-2.

वशिर्वेदि च यदामं तत् पौर्णिकमुदा-
हृतम्

Also quoted in Sudrakamalā
kara, leaf 10-2.

wara in his commentary on the *Amarakosha*,¹ expands the above definition of *ishta* so as expressly to include the sacrifice as well as the sacrificial gift : "The presentation of oblations to one fire and the offering of the same to three fires and the gift presented before the altar are called *ishtam*." The same text is quoted in the *Váchaspatyam* as of the sage Játukarna,² with the following addition :— "(Also) perpetual worship of fire, austerities, rectitude, the following of the Vedas, the entertainment of guests and the sacrifices, these are termed *ishtas*."

I have not been able to trace the texts of Manu quoted above by Hemádri and Maheshwara in the text of the Institutes of Manu as now extant ; but the quotation in Hemádri begins with what is now verse 227 of the fourth chapter, then is interposed the verse already mentioned, followed by verse 228, after which again a verse is interposed which cannot be traced in the existing text. The two versions are shewn in a note on next page in parallel columns.³

18. The following text of Sankha, quoted by Hemádri,⁴ gives the most complete enumeration of *ishta* works that I know of :—

Enumeration
of *Ishta*.

"He who sacrifices by *ishti*, *pasubandha*, *cháturmásya* and *agnishtoma*, and the like [rites], is the performer of *ishti*."

"*Agnihotra* (perpetual worship of fire), *tapas*, (austerities), rectitude, the following of the Vedas, *átithya* (entertaining guests), and the *vaisvadeva* (sacrifices),—these are termed *ishta*."

"What is sacrificed to one fire, or to three (fires), and what is given inside the sacrificial ground is called *ishtam*."

¹ Amara : विश्वव ज्ञानुक्रमेण, पूनं
ज्ञानादि कर्म यत् । Kánda II,
varga 7, v. 27.

Maheshwara : यत् ज्ञानुक्रमे तद्विदं
ज्ञानम् । ज्ञानुक्रमेण कर्म दातम् ।

² यथाग्निर्कर्म यवनं जेतायां यत्
ज्ञयते ।

यन्मर्त्येणां च यदाग्नम् इदं तदग्नि
वीक्ष्य ।

यन्मर्त्येणां तपः यत् वेदानाञ्चानु-
यासकम् ।

यन्मर्त्येणां वैश्वदेवस्य प्राङ्परिहृतिरि-
त्येतत् ।

Collating all these texts we arrive at the following enumeration of *ishta* works :—(1) Vedic sacrifices, &c. ;

* Manu as quoted by Hemādri.

दानधर्मं निषेवेत नित्यमैष्टिकपौर्त्तिकं ।
परितुष्टेन भादेन पात्रमासाद्य शक्तिः
॥ २२७ ॥
इह यज्ञं यद्दीयते दक्षिणादि तदैष्टिकं
बहिर्वेदि च यद्दानं दीयते तत्
पौर्त्तिकं ॥
यत्किञ्चिदपि दातव्यं याचितेनानु-
कूल्यया ।
उत्पश्यते हि तत्पात्रं यत्तारयति
सर्व्वतः ॥
स्वर्गायर्भूतिकामेन तथा पापोपशा-
नये ।
सुमुखा च दातव्यं ब्राह्मणेभ्यस्तथा-
न्यहं ॥

Let each *wealthy* man continually and sedulously perform sacred rites (इह), and (perform पून, *i.e.*) consecrate pools or gardens with faith; since those two acts, (इष्टापूतं), accomplished with faith and with riches *honestly* gained, procure an imperishable reward. 226.

If he meet with fit objects

* Hemādri Dānakhandam, Bib. Ind., pp. 19-20.

शक्तः । इष्टिभिः पशुवन्धे चतुर्मा-
स्येष्टेन यः ।
अग्निहोमादिभिर्दत्तैः यजेत च स इष्ट-
वान् ॥ १
अग्निहोत्रं तपः सत्यं वेदानाञ्चैव
पालनं ।
अतिथ्यं वैश्वदेवस्य इष्टमित्यभिधीयते ॥ २

Manu as in the text now extant.

अद्वयेष्ट्य पूनस्य नित्यं कुर्यादतन्त्रितः ।
अदाकते अक्षये ते भवतः स्वागतै-
र्धनैः ॥ ४ ॥ २२९ ॥
दानधर्मं निषेवेत नित्यमैष्टिकपौर्त्तिकं ।
परितुष्टेन भावेन पात्रमासाद्य
शक्तिः ॥ २२७ ॥

यत्किञ्चिदपि दातव्यं याचितेनानु-
कूल्यया ।
उत्पश्यते हि तत्पात्रं यत्तारयति
सर्व्वतः ॥ २२८ ॥

of benevolence, let him continually bestow gifts on them, both at sacrifices and consecrations (येष्टिकपौर्त्तिकं) to the best of his power, and with a cheerful heart. 227.

Such a gift, how small soever, bestowed on request without grudging, passes to a worthy object, who will secure the giver from all evil. 228.

एकाग्रिकादौ यत् कर्म चेतायां यच्च
क्रियते ।
अनाब्धेष्टाच्च यद्दानं दत्तं तदभिधीयते
॥ २

The second verse occurs in Atri (44); the third is quoted as from Manu by Maheshwara (*ante*, p. 19); and both verses are quoted as from Jatukarna in the Jalashayotsargatatvam.

(2) Gifts offered to priests at the same ; (3) Preserving the Vedas ; (4) Religious austerity ; (5) Rectitude ; (6) *Vaisvadeva*, sacrifices ; (7) *Atithya*, hospitality.

For our present purposes the only item with which we are concerned is the last. That is the only living form of *ishtam* which is of practical importance to us.

19. The words now in common use for guest (*atithi*) and hospitality (*atithya*) occur in the Vedas in the same sense, thus shewing that this virtue, like many others, is part of the rich heritage descended to the Hindus from their Vedic ancestors. In Rig Veda I, 76, 3, Agni, the fire-god, is invoked to bring down Indra from the heavens, so that the worshippers might “shew hospitality” to him.¹ In I, 44, 4, Agni himself is described as “the guest” of man ;² in I, 73, 1, the same god is described to be resting in the sacrificial chamber “like an honoured guest ;”³ and in VII, 3, 4, men are described bidding him “as a stranger in his couch.”⁴ At first sight it might seem incongruous to enumerate hospitality in the same breath with sacrifices ; but in reality the sacred literature of the Hindus treats of *atithya* as one of the *yajnas* or offerings, the performance of which is incumbent on every person. The *Satapatha Brāhmaṇa* (I, 7, 2) contains the following declarations under the heading of “The Chief Offerings”:⁵—

“Verily, whoever exists, he, in being born, is born as (owing) a debt to the gods, to the Rishis, to the fathers, and to men (1.)

* * * * *

“And further, inasmuch as he is bound to practise hospitality, for that reason he is born as (owing) a debt to men : hence when he harbours them, when he offers food

¹ Wilson's Rig Veda. London, 1850, Vol. I, p. 199.

² Wilson's Rig Veda, Vol. I, p. 119.

³ Wilson's Rig Veda, Vol. I, p. 194.

⁴ Müller's Ancient Sanskrit Literature, p. 548.

⁵ Müller's Sacred Books of the East, Vol. XII, pp. 190-191.

to them, it is (in discharge of his debt) to them that he does so. Whoever does all these things, has discharged his duties ; by him all is obtained, all is conquered (5.)”

as a common
debt to human-
ity,

20. In the *Dharma Sutra* of Āpastamba¹ the idea of *Ātithya*, being one of the Vedic sacrifices or offerings, is elaborately worked out as an allegory, and the same work contains elaborate rules as to the entertainment of guests. In the *Dharma Sutra* of Baudhāyana² we find the following :—

“ 1. Now these five great sacrifices, which are also called the great sacrificial sessions, are the sacrifice to be offered to the gods, the sacrifice to be offered to the manes, the sacrifice to be offered to all beings, the sacrifice to be offered to men, (and) the sacrifice to be offered to Brāhmaṇas.

* * * * *

“ 5. Let him daily give food to Brāhmaṇas, be it only roots, fruit or vegetables. Thereby he performs that sacrifice to men.”

as in expiation
of unavoidable
sins.

21. It will thus be seen that the older writings of the Hindus placed hospitality on the footing of being the discharge of a common debt to humanity. It was classed as one of the Vedic *yajnas* without any particular reason being assigned for its performance. Later works, however, have sought to place the performance of this and other duties, collectively called the *pancha yajna* upon a lower moral standard, namely, the necessity of expiating for the sins necessarily committed by every householder through certain media of his house-keeping avocations. This will be apparent from the following texts of Manu³ :—

“ With the sacred fire, kindled at the wedding, a householder shall perform according to the law of domestic ceremonies and the five (great) sacrifices, and (with that) he shall daily cook his food (67.)

¹ Prasna II, Patala 3, Khanda 7, Sutras 1-10. Müller's Sacred Books of the East, Vol. II, pp. 116-117.

² Prasna II, Adhyāya 6, Nan-

dika 11. Müller's Sacred Books of the East, Vol. XIV, pp. 256-257.

³ Institutes of Manu, III, 67-72. Bühler, S. B. E., Vol. XXVI, pp. 87-88.

"A householder has five slaughter-houses (as it were, viz.), the hearth, the grinding-stone, the broom, the pestle and mortar, the water-vessel, by using which he is bound (with the fetters of sin) (68.)

"In order to successively expiate (the offences committed by means) of all these (five), the great sages have prescribed for householders the daily (performance of the five) great sacrifices (69.)

"Teaching (and studying) is the sacrifice (offered) to Brahmins, the (offerings of water and food called) Tarpana the sacrifice to the manes, the burnt oblation the sacrifice offered to the gods, the Bali offering that offered to the Bhûtas, and the hospitable reception of guests the offering to men (70.)

"He who neglects not these five great sacrifices, while he is able (to perform them), is not tainted by the sins (committed) in the five places of slaughter, though he constantly lives in the (order of) house(-holders) (71.)

"But he who does not feed these five, the gods, his guests, those whom he is bound to maintain, the manes, and himself, lives not, though he breathes (72.)"

22. The *Satapatha Brâhmaṇa*,¹ in describing the ritual for the Soma sacrifice, treats of the *âtithya-ishti* or guest-offering to be made to King Soma, and the context leaves no doubt that the rite is modelled on human conduct on similar occasions. The same offering is dealt with by Āshwalâyana in his *Srauta Sûtras*, IV, 5 (Bib. Ind., p. 304). Although in these passages Soma is conceived of as a king and his honours regulated accordingly, yet the honours so predicated for the king are themselves modelled upon those offered to a common guest; the difference, if any, being one of degree and not of kind. By the Hindu conception the guest himself is a divinity. Manu in IV, 251, speaks in the same breath of the worship of the gods and of guests, ("दिविषन् देवतातिथीन्") for

The guest as a divinity.

¹ III, 4, 1, &c. Müller's Sacred Books of the East, Vol. XXVI, pp. 85.

worshipping gods and guests) and in an earlier sloka¹ he is more explicit :—

आसनाशनशय्याभिरद्विर्मूलफलैर्न वा ।

नास्य कश्चिदसेद्वेहे शक्तितोऽर्चितोऽतिथिः ॥

which is thus translated by Bühler :—

“No guest must stay in his house without being honoured (*architah*), according to his ability, with a seat, food, a couch, water, or roots and fruits” (Bühler, p. 133). But something more than honour is meant here. The expression *अर्चितः* literally rendered is equivalent to “worshipped.” The selection here of the very root *अर्चि* in connection with guests or in respect of both gods and guests as in IV, 251, is apparently intentional. Kulluka in his commentary explains it by the use of the verb पूज—(“अतिथिं पूजयेदित्युक्तम्”), which like *अर्च* is used primarily to mean the worship of deities, and conveys the sense of a religious duty or obligation.

Hospitality an imperative duty of Brahmins.

Parasara in his Institutes,² similarly, extols the worship of guests as a source of prosperity and enumerates it as one of the six duties (*shat-karma*), the performance of which is incumbent upon every Brahmin.

Public guest-houses.

23. We have thus far dealt with the virtue of hospitality in its individual and domestic character. It would seem, however, that along with such domestic hospitality there existed from the most ancient times public institutions for the reception and refreshment of travellers. A hymn in the Rig Veda addressed to the Maruts speaks of refreshments being ready at their “resting-places on the road,” and Wilson³ in commenting upon the expression

¹ Institutes, IV, 29.

² षट्कर्माभिरतो नित्यं देवता-
तिथिपूजकः ।

ऊतशेषम् सुखानी ब्राह्मणो नावसी-
दति ॥ १ । २७ ॥

सन्ध्या खानं जपो होमः स्वाध्यायो
देवतार्चनम् ।
वैश्वदेवातिथेयस्य षट्कर्माणि दिने
दिने ॥ १ ॥ २८ ॥

³ Rig Veda, II, 166, 9. Wilson,
Vol. II, p. 151.

declares it "worthy of note, as indicating the existence of accommodations for the use of travellers: the *Prapatha* is the *choltri* of the South of India, the *sarai* of the Mahomedans, a place by the road-side where the traveller may find shelter and provisions." In the Introduction to the second volume of his translation of the Rig Veda, Wilson reverts to the same subject in the following terms¹: "We have mention * * * * of travellers, and of *sarais*, or places provided for their refreshment: it is true that in the passage in which they are named the refreshments are said to be provided for the Maruts or the winds, but in this, as in the case of the cities of the *Asuras*, the notion must have been derived from what really existed: *Prapathas*, or *choltries*, were not likely to be pure mythological inventions; those for the *Maruts* must have had their prototypes on earth."

24. Coming now to the other class of meritorious acts, namely, *purtta*, we have already seen that they are mentioned in the Vedas and explained by the commentators to mean the gifts bestowed in *smárta* rites; that they are also mentioned in the supplemental literature of the Vedas and there explained in the sense of *smarta* works like tanks, wells, &c. We have also considered the text of Manu quoted by Hemádri, which defines *purtta* as the gifts bestowed outside the sacrificial ground. Several other texts bearing upon the same question remain to be considered.

*Narada*²:—"The gift made during an eclipse, or during the entry of the sun into different solstices, or on the twelfth lunar day and the like is called *purttam*." Their relative merits.

¹ Wilson's Rig Veda, Vol. II, Introduction, p. XVI.

² Quoted in Hemádri Dána-khandam, Bib. Ind., p. 20. Madana-ratna and Sudra Kamalákara, leaf 102:—

अक्षीपराम् यद्दानं सूर्यवक्त्रमेष च ।

हादम्नादौ तु यद्दानं तदेतत् पर्त-
मृचते ॥

Cf. text of Játukarna quoted in the Jaláshayotsargatatvam, p. 507:—

अक्षीपराम् यद्दानं पूर्वमित्यभिधीयते ।

*Yama*¹ :—"The Brahmin should diligently perform works of *ishta* and *purtta*. Heaven is attained by *ishta*; by *purtta* one enjoys final emancipation. *Ishta* works depend on riches. Tanks, groves, processions for the gods—these are called *purtta* works. He who repairs ruined wells with flights of steps, wells, tanks, and temples, enjoys the fruits of performing *purtta* works."

*Varāha Purāna*² :—" *Ishta* and *purtta* works are the first means of performing their religious duties for the twice-born classes. By *ishta* he obtains heaven, and in *purtta* he attains final emancipation. Wells with flights of steps, wells, tanks, temples and groves are called *purtta* works."

*Vyāsa*³ :—"Tanks, wells with flights of steps, temples, the bestowing of food, and groves—these are called *purttam*."

*Jātukarna*⁴ :—"Wells with flights of steps, wells, tanks, the gift of food, and the planting of groves are called *purtta*. * * * * * are called *ishta*. The gift

¹ इष्टापूर्तम् कर्तव्यं ब्राह्मणेन
प्रयत्नतः ।
इष्टेन लभते स्वर्गं पूर्णं मोक्षं समश्नुते ॥
१८ ॥
विनापेक्षं भवेदिष्टं तद्गमं पूर्णमुच्यते ।
आरामश्च विशेषेण देवलोकास्तथैव च ॥
१९ ॥
वापीकूपतडागानि देवतायतनानि च ।
पतितान्यङ्गरेडु यक्षस्य पूर्णफलमश्नुते ॥
२० ॥

² इष्टापूर्नं हिजातीनां प्रथमं धर्म-
साधनं ।
इष्टेन लभते स्वर्गं पूर्णं मोक्षं च विन्दति ॥
वापीकूपतडागानि देवतायतनानि च ।
आरामश्च विशेषेण पूर्णं कर्म विनि-
दिशेत् ॥

Quoted in the *Sabdakalpadruma*.

³ Quoted in Hemādri Dāna-
khandam, Bib. Ind., p. 20.

पुष्करिण्यस्या वापी देवतायतनानि
च ।
अन्नदानमारामाः पूर्णमित्यभिधी-
यते ॥

Almost identical words are used
in a text which is ascribed in the
Madanaratna and the *Sudra-
Kamalākara* to the sage Jātu-
karna, but which is also to be
found in the *Atri Samhitā* :—

वापीकूपतडागादि देवतायतनानि च
अन्नप्रदानमारामाः पूर्णमित्यभिधी-
यते ॥

⁴ वापीकूपतडागादि देवताय-
तनेषु च ।
अन्नप्रदानमारामाः पूर्णमित्यभिधी-
यते ॥

which is made during an eclipse is called *purtta*. *Ishta* and *purtta* are said to be the common duties of the twice-born class. The Sudra is authorised to perform *purtta* works of religion, but not those appertaining to the Veda."

*Sankha*¹ :—"The service of the sick is declared to be *purtta*." 'Purtta' includes relief of the sick.

In this connection, I may mention here that the institution of charitable dispensaries and hospitals (*arogyashālās*) for the benefit of all castes under the superintendence of skilful doctors, was a well-recognised form of religious charity, as appears from the various texts from Purānas, cited by Hemādri in Chapter XIII of his *Dānakhandam*.² Hospitals.

The following enumeration of *purtta* works can be compiled from the texts above quoted or referred to :— Enumeration of 'Purtta.'

- (1) Gifts offered outside the sacrificial ground.
- (2) Gifts on the occasions of an eclipse, solstice and other special occasions.
- (3) The construction of works for the storage of water, as wells, *baolis*, tanks, &c.
- (4) The construction of temples for the gods.
- (5) The establishment of processions for the honour of the gods.
- (6) The gift of food.
- (7) The relief of the sick.

+++++ इहमित्यभिधीयते ॥
 ३. होषराजे यद्दानं पूर्णमित्यभिधीयते ॥
 इहोपूतं द्विजातीनां धर्मः सामान्य
 उच्यते ।
 अधिकारी भवेच्छूद्रः पूर्णं धर्मं न
 वैदिके ॥

Quoted in the *Jalāshayotsarga-tatvam*, pp. 506-507. The last line is quoted in *Sudra Kamalākara*, leaf 64-2, as a text of *Jātukarna*, but in an earlier portion (leaf 10-2) it is quoted as a text of *Vyasa* and

Jātukarna. The first two lines are quoted in the *Madanaratna* and in the *Sudra Kamalākara*, leaf 10-2.

¹ रोगिणां परिचर्या च पूर्णमित्यभिनिर्दिश्यते ।

Quoted in *Hemādri Dānakhandam*, Bib. Ind., p. 20, and *Sudra Kamalākara*, leaf 10-2.

² *Samvartta* and *Agastya*, quoted in *Ditto*, p. 892; *Skandapurāna*, pp. 894-5.

Gifts for promoting knowledge.

25. The bestowal of learning, with the bestowal of land and cows, forms the group of the three surpassingly meritorious classes of gifts, *atidānas*, mentioned in an Upanishad of the Sāmaveda.¹ Hemādri quotes from *Nandipurāna*, *Gáruḥapurāna*, *Vrihaspati*, and *Vishnu-dharmottara*, texts extolling the merits of educational gifts. Different rewards for the gift of different *vidyās* or sciences are mentioned in *Devipurāna* and *Nandipurāna*.² The gift of Vedas and of their effigies, the gift of Smritis and Puranas, as also the gift of the hearing of *Puranas*, are conducive to the earning of religious merits of various degrees of efficacy.³ Helps to students in the shape of books and writing materials, food, clothing and instruments, land, house, furniture, or fields,—in fact, the gift of everything that contributes to the students' maintenance and well-being or is necessary for the acquisition of the special branch of learning that they study, is productive of great religious merit to the donor who is to reap the heavenly fruits of his charities in the next world.⁴

¹ Hemādri *Dānakhandam*, p. 19; also *Adityapurāna*, quoted by Hemādri at p. 511.

² Hemādri *Dānakhandam*, pp. 511 & 515.

³ Ditto, pp. 517, 523, 534 & 540.

⁴ Ditto, pp. 558-559.

"ISHTA."

CHAPTER II.

(*Lecture II.*)

ON THE ORIGIN OF TEMPLES AND IMAGE WORSHIP.

Religious motive of existing Hindu endowments, 1.—The present popular religion of the Hindus contrasted with the religion of the Vedas, 2; the Vedic worship and present popular practice, 3.—Origin of priests and temple-structures, 4.—Origin of Image-worship, 5; evidence of Image-worship in Vedic literature, 6; later evidence, 7.—The earliest trace of endowments: "Yogakshema" as expounded in Manu and Mitāksharā, different interpretations, 8.—Conclusion: popular sentiment of charity, 9.

1. If we take a careful survey of the existing Hindu endowments we shall find that in the great majority of the cases they are intended for the honor of the gods or the Brahmins. Temples are erected for the worship of particular deities and lands annexed to them for the perpetuation of their worship, generally by Brahmins. It is not uncommon to find temples adjoined to tanks and to bathing ghats in rivers. In numerous cases gifts of land and other valuables are made to Brahmins direct, without the intervention of any divinity. The ruling motive of every Hindu making an endowment is a religious one, namely the acquisition of pious merit or the removal of the effects of sin with a view to happiness in this world and in the next. Of course by the very necessities of the case, the object in cases of death-bed gifts must be solely spiritual benefits in the next life.

The Hindu motive for endowments is essentially religious.

Vedic Deities.

2. The religion of the Vedas differs widely from the present popular religion of the Hindus. "The deities to whom the songs are for the most part addressed are the following :—First Agni, the god of fire. The songs dedicated to him are the most numerous of all—a fact sufficiently indicative of the character and import of these sacrificial hymns. He is the messenger from men to the gods, the mediator between them who with his far-shining flame summons the gods to the sacrifice, however distant they may be. He is for the rest adored essentially as earthly sacrificial fire, and not as an elemental force. The latter is rather pre-eminently the attribute of God to whom, next to Agni, the greatest number of the songs is dedicated, *viz.*, Indra. Indra is the mighty lord of the thunderbolt, with which he rends asunder the dark clouds, so that the heavenly rays and waters may descend to bless and fertilise the earth. A great number of the hymns, and amongst them some of the most beautiful, are devoted to the battle that is fought because the malicious demon will not give up his booty ; to the description of the thunderstorm generally, which with its flashing lightnings, its rolling thunders, and its furious blasts made a tremendous impression upon the simple mind of the people. The break of day, too, is greeted ; the dawns are praised as bright, beautiful maidens ; and deep reverence is paid to the flaming orb of the mighty sun, as he steps forth vanquishing the darkness of night and dissipating it to all the quarters of the heavens. The brilliant sun-god is besought for light and warmth, that seeds and flocks may thrive in gladsome prosperity."¹

Besides the three principal gods, Agni, Indra, and Surya, the hymns of the Veda sing the praises of a great number of other divinities, chiefly, "the Maruts, or winds, the

¹ Weber's History of Indian Literature, 2nd edition, 1882, p. 48.

faithful comrades of Iṇdra in his battle ; and Rudra, the howling, terrible god, who rules the furious tempest.”¹ According to *Yāska*,² the famous etymologist of the Vedas, whose *Nirukta* is the only treatise of its kind which has survived to our day, there are in substance only three gods in the *Veda*:—*Agni* on the earth, *Vāyu* or *Iṇdra* in the sky, and *Surya* in heaven, of each of whom there are many appellations expressive of his greatness and of the variety of his functions.” The number of Vedic gods is given at thirty-three,³ increased millionfold in more degenerate times. “The divinities worshipped (in the *Veda*) are not unknown to later systems, but they there perform very subordinate parts, whilst those deities who are the great gods—the *Dii majores*—of the subsequent period, are either wholly unnamed in the *Veda*, or are noticed in an inferior and different capacity. The names of SIVA, of MAHADEVYA, of DURGA, of KALI, of RAMA, of KRISHNA, never occur, as far as we are yet aware : we have a RUDRA, who, in after-times, is identified with SIVA, but who, even in the *Purāṇas*, is of very doubtful origin and identification, whilst in the *Veda* he is described as the father of the winds, and is evidently a form of either AGNI or IṆBRA ; the epithet KAPARDIN, which applied to him, appears, indeed, to have some relation to a characteristic attribute of SIVA,—the wearing of his hair in a peculiar braid ; but the term has probably in the *Veda* a different signification—one now forgotten,—although it may have suggested in after-time the appearance of SIVA in such a head-dress, as identified with AGNI ; for instance, KAPARDIN may intimate his head being surrounded by radiating flame, or the word may be

Their position
in later
systems.

Deities un-
known to
Vedas.

Siva.

¹ Weber's History of Indian Literature, 2nd edition, 1882, p. 40.

² Quoted in Wilson's translation of the Rig Veda, Vol. I,

p. XXXIX; Muir's Texts, Vol. V, p. 8.

³ Muir's Texts, Vol. V, p. 9.

Lingam.

Trimūrti.

Vishnu.

an interpolation; at any rate, no other epithet applicable to ŚIVA occurs, and there is not the slightest allusion to the form in which, for the last ten centuries at least, he seems to have been almost exclusively worshipped in India,—that of the *Linga* or *Phallus*: neither is there the slightest hint of another important feature of later Hinduism, the *Trimūrti*, or Tri-une combination of BRAHMA, VISHNU, and SIVA, as typified by the mystical syllable *Om*, although according to high authority on the religions of antiquity, the *Trimūrti* was the first element in the faith of the Hindus and the second was the *Lingam*.¹ Vishnu appears in the hymns as one of the minor divinities—a manifestation of the sun-god and the useful friend of Indra.² The idea of his incarnations which occupies so large a portion of the latter-day creed is entirely absent in the *Veda* proper. His three steps—*Tri-vikrama*—are identified with “the different positions of the sun at his rising, his culmination and his setting,”³ and in the same connection commentators explain *Vishnupada* to mean the meridian sky and *gayasira* the hill of setting.⁴ In the *Satapatha Brāhmaṇa*, Vishnu is said to have been a dwarf,⁵ and it is only in the epic poems that we can find the dwarf combined with the three steps to build up the present story of the *Vāmana Avatāra* or Dwarf incarnation of Vishnu. *Gaya-sīrṣha* and *Vishnu-pada* have become the subjects of a separate legend sanctifying Gayā as a place of pilgrimage for the performance of *śrāddhas*, for the benefit of the souls of deceased ancestors. Amongst others this legend is given in the Gayā *Māhātmya* portion of the *Vāyu Purāna*.⁶

¹ Wilson's *Rig Veda*, Vol. I, pp. XXVI.—XXVII.

² Muir's Texts, Vol. IV, pp. 68, 78, 86, 91.

³ Muir's Texts, Vol. IV, p. 66.

⁴ Muir's Texts, Vol. IV, p. 65.

⁵ Muir's Texts, Vol. IV., p. 123.

⁶ *Shabdakalpadruma*, Vol. II., pp. 970—2.

In the Rig Veda, I, 61, 7, it is said, that

Vishnuh.....vidhyad varáham.

Vishnu pierced (the) *Varáha*, and Wilson in his translation makes this mean that Indra, the pervader of the universe, pierced the cloud, *Varáha* being one of the recognised synonyms for *megha* in Vedic lexicography. Dr. Muir, however, translates the passage to mean that Vishnu pierced the boar. I think the meaning given by Wilson is the earlier and the truer meaning, although in the later hymn (Rig Veda, VIII, 66, 10,) I accept Dr. Muir's rendering of *Varáha* by a hog. "The wide-striding Vishnu, urged by thee, O Indra, carried off all [these things],—a hundred buffaloes, broth-cooked with milk, and a hog *Emusha*." Muir, with some hesitation, renders the last word as "fierce," and most likely he is right.¹ In the *Satapatha Brahmana*, however, the legend has so far decayed that it is said "formerly this earth was only so large, of the size of a span. *Emusha*, a boar, raised her up." In the *Taittiriya Brahmana*, this boar (*Varáha*) is identified with *Prajapati* and even in the *Ramayana* the legend is continued in that form,² the boar being described as a manifestation of *Brahmá* and not of *Vishnu*, and it is only in later times that we hear of the boar-incarnation of *Vishnu*. *Krishna*, *Devakiputra*, the son of *Devaki*, is *Krishna* mentioned in the *Chhándogyá Upanishad* not as an incarnation of *Vishnu*, but only as a scholar eager after the pursuit of knowledge and belonging perhaps to the military caste.³ And as for *Káli*, the *Mundakopanishad* describes *Káli* her, along with *Karáli*, as one of the seven tongues of fire, and not as a separate and powerful divinity.

¹ Rig Veda, Vol. I, p. 163.

² Muir's Texts, Vol. IV, p. 67.

³ Muir's Texts, Vol. IV, p. 91.

⁴ Muir's Texts, Vol. IV, pp. 27-28.

⁵ Muir's Texts, Vol. I, pp. 53-54.

⁶ Weber's History of Indian Literature, p. 71; Muir's Sanskrit Texts, Vol. IV, p. 183.

Vedic worship
and modern
practice com-
pared.

3. The forms of worship prevailing in the Vedic age were also widely different from that prevailing at present under popular practice. The worship which the hymns describe¹ "comprehends offerings, prayer, and praise; the former are chiefly oblations and libations,—clarified butter poured on fire, and the expressed and fermented juice of the soma plant, presented in ladles to the deities invoked, in what manner does not exactly appear, although it seems to have been sometimes sprinkled on the fire, sometimes on the ground, or rather on the kusa, or sacred grass, strewed on the floor, and in all cases the residue was drunk by the assistants. - The ceremony takes place in the dwelling of the worshipper, in a chamber appropriated to the purpose and probably to the maintenance of a perpetual fire, although the frequent allusions to the occasional kindling of the sacred flame are rather at variance with this practice.

Temples not
mentioned in
Vedas.

There is no mention of any temple, or any reference to a public place of worship, and it is clear that the worship was purely domestic. The worshipper, or *Yajamana*, does not appear to have taken of necessity any part personally in the ceremony, and there is a goodly array of officiating priests,—in some instances seven, in some sixteen—by whom the different ceremonial rites are performed, and by whom the mantras, or prayers, or hymns are recited. That animal victims were offered on particular occasions, may be inferred from brief and obscure allusions in the hymns of the first book, and it is inferrible from some passages that human sacrifices were not unknown, although infrequent and sometimes typical; but these are the exceptions, and the habitual offerings may be regarded as consisting of clarified butter and the juice of soma plant."

The institutio.
of priests by
Vedic people.

4. Although the Vedic worship of fire and of the elements was in its origin patriarchal and domestic, there

¹ Wilson's *Rig Veda*, Vol. I, xxiii, xxiv.

is evidence in the hymns themselves of a later tendency to establish an elaborate priestly organisation.¹ It is remarked by Eggeling in the Introduction to his translation of the *Satapatha Brahmana*, that, "from clear indications in not a few hymns of the Rig Veda, it appears that a distribution of the sacrificial functions among different classes of priests had taken place before the final reduction of that collection."² The fire-god, nevertheless, did not require a temple to be built for him.³ The ordinary daily sacrifices were performed in the house, and from their simple character required not the assistance of a ministering priest. The fire was accommodated in a separate shed attached to the residence of the worshipper. Even in the case of the greater sacrifices instituted by rich and powerful individuals temporary constructions sufficed for the *Yajnasālā* or the Hall of Sacrifice.⁴ The state of society in the Vedic period was partly pastoral and partly agricultural. Villages (*grāma*) are mentioned several times in the hymns, and in one place it is said that Indra demolished a hundred cities of stone, an expression which could hardly have been used even for a mythological purpose, unless the Rishi had some knowledge of stone structures and before his mental if not his actual vision prototypes in stone-built cities on the earth. In other places *iron cities* or *fortifications* are mentioned, doubtless in mythological or figurative senses, but nevertheless the use of such mythologies or figures of speech suggests the idea of forts or fortified cities as actually existing in the country at that time. Bricks (*ishtaka*) are frequently mentioned in the *Brahmanas* as used for the construction of vedis or altars, but it

Their competency to erect temples undeniable;

¹ Wilson's Rig Veda, Vol. II, East, Vol. XII, p. 15.
Introduction, p. 1.

² Müller's A. S. L., p. 204.

³ Müller's Sacred Books of the

⁴ Muir's Texts, Vol. V, p. 451.

but temples
were not re-
quired.

Image-wor-
ship in Vedic
period,

denied by
Müller.

Muir's view.

Dr. Bollensen's
linguistic
proof

does not clearly appear whether they were baked or not. Altogether there cannot be any doubt that the Vedic people were quite competent to erect temples, but they did not raise them because of the peculiar nature of their worship at that time which did not then require such edifices.

5. Closely connected with the question of temples is the question whether the Vedic Indians made images of their gods? Max Müller answers firmly in the negative. "The religion of the Veda," says he, "knows of no idols. The worship of idols in India is a secondary formation, a later degradation of the more primitive worship of ideal gods."¹ On the other hand Dr. Bollensen,² on the authority of texts, some of them given in the fifth volume of Muir's Sanskrit Texts, is of opinion that the hymns contain clear references to images of the gods, and Muir himself leaves the question open, preferring to hear what the other side have to say to Dr. Bollensen's specific authorities. It is not necessary here to enter into any detailed examination of these texts, but it will be sufficient to say that they do not necessarily and irresistibly lead to the desired conclusion, but are quite susceptible of a meaning quite in harmony with the traditions of oriental commentators and with the opinion deliberately expressed by so eminent an authority on the Vedas as Max Müller. The gods are described in the hymns with many human attributes—a necessity of the human mind and language—but it does not *necessarily* follow therefrom that images of those gods clothed in such human attributes were artificially prepared and worshipped. Dr. Bollensen argues from the fact of the Vedic gods being called *divo naras*, "men of the sky," or *nripes'as*, "having the form of men," that the Indians did not merely in imagination assign human forms to

¹ Chips from a German Workshop, Vol. I, p. 38.

² Muir's Texts, Vol. V, p. 453.

their gods, *but also represented them in a sensible manner.* impeached by a comparison of Biblical phraseology.
 I confess my inability to follow the latter part of the argument. By parity of reasoning, when the Book of Genesis speaks—

“And God said, Let us make man in our image, after our likeness. * * * * *

So God created man in his *own* image, in the image of God created he him. * * *”¹

—we ought to assume that in the time of Moses the Jews worshipped their God by making human images.

It would be equally reasonable to argue from expressions like the following in the Psalms of David:—

“The LORD *is* in his holy temple, the LORD’S throne *is* in heaven: his eyes behold, his eyelids try, the children of men.”²

“Keep me as the apple of the eye, hide me under the shadow of thy wings.”³

“In my distress I called upon the LORD and cried unto my God: he heard my voice out of his temple, and my cry came before him, *even* into his ears.* * *
 * * There went up a smoke out of his nostrils, and fire out of his mouth devoured: coals were kindled by it.

“He bowed the heavens also, and came down: and darkness *was* under his feet.

“And he rode upon a cherub, and did fly: yea, he did fly upon the wings of the wind.* * *

“Yea, he sent out his arrows, and scattered them,”⁴—and so on,—that the Jews in David’s time worshipped their national god, as a visible image with hands and feet and wings, riding on a cherub and holding arrows in his hands.

¹ Chap. 1, verses 26, 27.

² Psalm XI, verse 4.

³ Psalm XVII, verse 8.

⁴ Psalm XVIII, verses 6, 8, 9, 10, 14.

Later but unequivocal evidence in Vedic literature.

6. It must, however, be freely admitted that in the later Vedic literature there is unequivocal evidence of the existence of images of gods and of temples raised for their accommodation. Thus in the *Adbhuta Brahmana* of the Sama Veda,¹ which is devoted to the enumeration of the untoward occurrences of daily life, omens and portents, along with the rites to be performed for averting their evil consequences, the quaking of temples, and the laughing, singing, dancing, breaking, sweating, and twinkling of divine images is expressly mentioned and provided for :—

देवतायतनानि कम्पन्ते, देवतप्रतिमा हसन्ति गायन्ति नृत्यन्ति स्फुटन्ति खिद्यन्त्युन्मीलन्ति निमिषन्ति । &c., &c.,²

and a similar provision is made in the *Adbhutādhyāya* or the Chapter on Omens and Portents in the *Kausika Sutra* which, according to Weber, is the sole existing ritual sutra of the *Atharva Veda*³ :—

“अथ यत्रैतद्देवतानि नृत्यन्ति श्येतन्ति हसन्ति गायन्ति वान्धानि वा रूपाणि कुर्वन्ति” । &c.⁴

Similar evidence in Gautama Dharma Sutra.

7. In the *Dharma Sutra* of Gautama, “temples of the gods” are enumerated amongst the places which destroy sin.—“All mountains, all rivers, holy lakes, places of pilgrimage, the dwellings of Rishis, cow-pens and temples of the gods (are) places (which destroy sin).”⁵

And in an earlier *Sutra*, in laying down the rule of the road, Gautama directs that temples of gods should be passed to the right—a direction which later on developed into the practice of perambulation to the right side प्रदक्षिणः—“He shall pass excellent (being and things), auspicious

¹ Weber's *History of Indian Literature*, p. 69.

² Weber's *Adbhuta Brahmana*, or *Zwie Vedische texte über Omina und Portenta*, p. 335.

³ Weber's *History of Indian*

Literature, p. 152.

⁴ *Zwie Vedische texte über Omina und Portenta*, p. 367.

⁵ Gautama, Ch. XIX, S. 14; Müller's *S. B. E.*, Vol. II, p. 273.

(objects), temples of the god, cross-roads, and the like with his right turned towards them.”¹

Images of the gods are specifically mentioned in the same Dharma Sutra under a rule relating to calls of nature and another relating to the stretching out of feet in a particular direction.—“Facing or within sight of wind, fire, Brâhmaṇas, the sun, water, (images of the) gods, and cows, he shall not eject urine or fæces or other impurities.” “He shall not stretch out his feet towards those divine beings.”² And the same rules are repeated in the Dharma Sutra of Āpastamba :—

He shall not void excrements facing the fire, the sun, In Āpastamba, water, a Brâhmaṇa, a cow or (image of) the gods.

“If possible, he shall not stretch out his feet towards a fire, water, a Brâhmaṇa, a cow (image of) the gods, or a door.”³

8. The earliest trace of endowments is to be found in a rule of the Gautama Dharma Sutra in connection with partition of inheritances :—

“Water for (property distrained for) pious uses or sacrifices, and prepared food shall not be divided.”⁴ The terms used in the text for (property distrained for) pious uses and sacrifices are *Yôga* and *Cshema*. The identical terms occur in Manu, Ch. IX, S. 219, and also in Mitâksharâ in the enumeration of effects not liable to partition. The terms are capable of different interpretations, but the following explanation by Vignâneshvara is the most reasonable and adopted by Haradatta and Nanda Pandita on the parallel passages of Gautama and Vishnu :—

“The term *Yôgacshema* is a conjunctive compound resolvable into *Yôga* and *Cshema*. By the word *Yôga* is signified

¹ Gautama, Ch. IX, S. 66; Müller's S. B. E., Vol. II, p. 223.

² Āpastamba, I, p. 11, k. 30, s. 20 & 22. Müller's S. B. E., Vol. II, pp. 95-96.

³ Gautama, Ch. IX, ss. 12, 13; Müller's S. B. E., Vol. II, p. 218.

⁴ Müller's S. B. E. Vol. II, p. 306.

a cause of obtaining something not already obtained, that is, a sacrificial act to be performed with fire consecrated according to the *Veda* and the law. By the term *Cshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained; such as the making of a pool or a garden, or the giving of alms elsewhere than at the altar. Both these, though appertaining to the father, or though accomplished at the charge of the patrimony, are indivisible; as *Laûgácsi* declares: 'The learned have named a (*purttā*) conservatory act *Cshema*, and a sacrificial one *Yôga*; both are pronounced indivisible: and so are the bed and the chair.'

"Some (Medhātithi and the Calpataru) hold, that by the compound term *Yôgacshema*, those who effect sacrificial and conservatory acts (*Yôga* and *Cshema*), are intended, as the King's counsellors, the stipendiary priests, and the rest. Others say, weapons, cowtails, parasols, shoes and similar things are meant."¹

Bühler, agreeing with the commentary of Vignânesvara, observes: "I prefer it to all others, chiefly on account of the explicit passage of *Laûgácsi* which Vignânesvara quotes. In its favor speaks also that numerous royal grants allow villages or land to *Brahmaṇas* and their descendants for the performance of certain sacrifices, or for charitable purposes, such as the daily distribution of food (*annasuttra* or *sadavrata*), and that the occurrence of a rule in the *Smritis*, declaring property given under such conditions to be impartible, is no more than might be expected."²

To the *Smṛiti* of *Laugácsi*, quoted above, Nila Kantha in his *Vyavahāra Mayukha* further adds: "There *Purttam* means a tank, garden, &c., and *Ishtam* a sacrifice, a feast to *Brahmaṇas*, and the like. The meaning is, whatever

¹ From Colebrook's *Mitāksharā*, Ch. I, 4—23 & 24, pp. 275-6.

² See Bühler's *Menu*, p. 379 note to s. 219.

wealth has been given up and set apart for such purposes with the consent of all when in an undivided state by a (certain) man, it should be used by that alone for that same charity, and not by another, nor by all together."¹ The Hon'ble V. N. Mandalik, however, in his translation of the original text of Menu, quoted by Nila Kantha, translates the word *Yôgacshema* by "sacrificing priests." His rendering thus differs from that of Vignânesvara and is based on *Kullukabhata*, the Smṛiti of Laugākshi being quoted as authority by both.²

9. One thing, however, is plain : that public charitable institutions were endowed in a recognised form from the very earliest age of Hindu religion, and the greatest merit was attached to their creation and maintenance. The religious zeal for the preservation of their sanctity gave rise to fixed rituals and ceremonies. With the natural decay of religion, more elaborate rules were framed for the determination, founding or institution, construction and renunciation of temples and other public charitable endowments. "In course of time, deterioration set in. Still the original principal lives, though it will avoid noise and fashion." So says the Hon'ble V. N. Mandalik, and he sums up the true popular sentiment in the following lines :—

Virtue, the latent principle of charity.

“अष्टादशपुराणानां सारसारं समुद्धृतम् ।

परोपकारः पुण्याय पापाय परपोडनम्” ॥

“The essence of the essence extracted of the 18 Purānas is (that) service to others produces *punya* (virtue), and injury to others (produces) sin.”³

¹ Mandalik's *Mayukha* and and Mandalik's ditto, p. 70.
Yagnavalkya, *Mayukha*, p. 71. ² Mandalik's ditto.

³ See *Viramitrodaya*, 1, 221, p. 1, Appendix II, p. 333.

CHAPTER III.

(Lecture III).

ON THE CONSTRUCTION OF TEMPLES.

Construction of temples, the most common form of endowment, 1; texts extolling THE MERITS of construction and dedication, 2; proportion of merit to materials used in construction, 3.—GENERAL RULES OF BUILDING *Vastus* (houses) applicable, — texts directing the proper TIMES FOR CONSTRUCTION, 4; dissent of Raghunandana and his explanation, 5.—SELECTION OF SITE, 6; rules in *Mānasāra* and other authorities, 7; colour and smell, 8; taste, shape and other qualities of the soil, 9; other tests, 10; the rationale of the tests, 11; tests of fertility, 12,—and of solidity, 13; a universal maxim of selection, 14. Effect of the progress of society and religion, 15; special rules as to site of temples, 16; fit surroundings, 17; directions for temples of special deities, 18; location of domestic chapels, 19.—CLEANING AND PURIFYING THE SOIL; the old practice of ploughing the land and the modern ceremony of *bhumi-parigraha*, 20; further details of ploughing, 21; sowing of seed and grazing of crop by cattle, 22; ascertaining cardinal points, 23; feeding Brahmins on the soil,—eradicating underground 'salyas' or 'thorns,' 24.—THE VASTU-YAGA; the vedic conception of a *Vastospati*, 25; the sacrifice according to Gobhila, 26; other directions in *Ashvalāyana*, 27; modern practice as regards the time for the sacrifice, 28; the *Vastu-purusha*, 29; the modern ritual of the *Yāga*: preliminaries, 30; specific ceremonies,—drawing the *Vastu Mandala* and worshipping its deities, on it, 31;—or before *Saligram*, in case of inability, 32; the *homa*, 33; the omen of floating flowers, 34; conclusion, 35.—SELECTION OF MATERIALS, as timber, 36.—The ceremony of *Sūdanḍa*, 37; rules as to the substance, 38; the ritual, 39.—RULES OF ARCHITECTURE: on the direction of doors and construction of temples, 40.—The common form of Bengal temples, 41.—THE PRATISHTHA or consecration of temples analogous to the *griha pravasha* of *Vastus*, 42.

Erection of temples.

1. THE erection of temples is the most common form of endowments prevalent amongst the Hindus in the present day, and I propose therefore to deal with these in the first instance.

2. *The religious merit acquired by the construction of a temple and its dedication to the worship of particular divinities is extolled in numerous sacred texts.* I. Texts on their religious merit.

*Vishnu Rahasya*¹ :—“Those who in the sports of childhood create out of dust a temple for Vāsudeva, even they sojourn to the regions sacred to that divinity.” Acquiring the deity's region and freedom from sin.

*Agni Purana*² :—“Of those persons who are ever contemplating the construction of a temple for Hari, the sins of a previous hundred births are destroyed.”

*Narasinha Purana*³ :—“Whoever conceives the idea of erecting a divine temple, that very day his carnal sins are annihilated ; what then shall be said of finishing the structure according to rule. Beyond description is the wealth of religious merit acquired by the person who makes an abode of Vishnu of eight bricks. The merits accruing from extensive buildings can be presumed in proportion. He who dies after making the first brick (for the construction of a temple) obtains the religious merit of a completed *Yajna*.” Merit of beginning only.

¹ Quoted in श्रीहरिभक्तिविलास, p. 694.

वाक्ये संग्रीहमाना ये पांशुभिर्भुवनं
हरिः ।

वासुदेवस्य कुर्वन्ति तेषां तत्त्वोक्त-
गामिनः ॥

² ये ध्यायन्ति सदा मुक्ता करिष्यामो
हरिर्गृहं ।

तेषां विहीयते पापं पूर्वजन्मभूतं ॥

Quoted in श्रीहरिभक्तिविलास, p. 693.

³ यः कुर्याच्छोभनं वेद्यं नरसिंहस्य
भक्तिमान् ।

सर्वपापविनिर्मुक्तो विष्णुलोकमवाप्नु-
यात् ॥

देवमारं करोमीति मनसा यस्तु चि-
न्तयेत् ।

तस्य कायगतं पापं तदङ्का विप्र
नश्यति ॥

कृते तु किं पुनस्तस्य प्राप्तादे विधि-
नैव तु ॥

अष्टहृत्का समायुक्तं यः कुर्याद्द्वैष्यवं
गृहं ।

न तस्य फलसम्पत्तिर्वक्तुं शक्येत केन
चित् ॥

अनेनैवानुमेयम् फलं प्राप्ताद-विष्णु-
रात् ॥

मरणस्य ब्रजेन्मर्त्यो यः कृत्वा प्रथमेष्टकां ।
स समाप्तस्य यज्ञस्य फलमाप्नोत्यसंशयं ॥

Quoted in श्रीहरिभक्तिविलास, p. 694.

*Vishnu*¹ :—"A man attains the regions presided over by that deity whose temple he erects."

*Yama*² :—"By erecting temples for the gods, by consecrating their images and by adorning them with various paintings, the dedicator obtains the regions dedicated to those deities."

Salvation of
self and gener-
ations.

*Vamana Purana*³ :—"He who causes the construction of a temple for Mādhava, conquers the eternal abodes of purity. * * * * * The establisher of a temple for Vishnu procures the salvation of himself and of eight generations above his grandfather. Thus, a song by the ancestors (says) : 'May some one be born in our race a worshipper of Vishnu, the performer of pious acts, who may establish a temple for Hari.'"

Irrespective of
cost, and status
of constructor.

*Agni Purana*⁴ :—"The man who causes a temple to be built for Hari, carries to the mansion of Vishnu ten thousand past and future generations. Whether a temple is built for Hari by the expenditure of a lakh or a thousand or a hundred or a fifty, the merit is the same here for the rich and the poor, respectively."

¹ यस्य देवस्यायतनं करोति स तत्तत्काममाप्नोति ।	किञ्च पिङ्गगाथा । अपि नः स्वकुले कश्चिद्विष्णुभक्तो भवि- ष्यति ।
Quoted in the मठप्रतिष्ठातत्त्वं p. 687.	
² कृत्वा देवालयं सर्वं प्रतिष्ठस्य च देवता ।	हरिमन्दिरकर्ता यो भविष्यति शुचि- व्रतः ॥
विधाय विधिवश्चिन्तं तत्तत्कामं विन्दते भुवं ॥	Quoted in श्रीहरिमक्तिविलास, p. 69.
Quoted in the मठप्रतिष्ठातत्त्वं p. 687.	
³ यः कारयेन्मन्दिरं माधवस्य पुण्यान् स जयेन्मन्त्रान् वै ।	⁴ समतीतं भविष्यच्च कुलानामयुतं जरः ।
* * * * *	विष्णुलोकं नयत्याशु कारयित्वा हरे- र्यदं ॥
पितामहस्य पुरतः कुलान्यष्टौ च यानि तु ।	लक्ष्मणाय सहस्रेण शतेनार्जुन वा हरेः । तुल्यं फलं समाख्यातमिहेश्वरदरि- द्रयोः ॥
तारयेदात्मना साहं विष्णोर्मन्दिर- कारकः ॥	Quoted in श्रीहरिमक्तिविलास, pp. 693-694.

*Bhavishya Purana*¹ :—"The religious merit accruing from (the expenditure of) a small or great amount of wealth (in the construction of a temple) is the same for the poor and rich (according to their means").

*Skanda Purana*² :—"On beginning the construction of a temple for Krishna, the sins committed in seven births are annihilated, and the ancestors rescued from hell. For each particle of dust resting at the foot of Krishna's temple, the endower dwells a thousand years in the mansions of Vishnu. He who causes paintings in the temple of Krishna, dwells in the mansions of Vishnu as long as the oceans last."

3. *Bhavishya Purana*³ :—"The merit of constructing a temple of wood is ten million times that of an earthen one. The merit in a brick house is a hundred billion of times. The wise know the merit in a structure of stone to be two hundred thousand billions. The merit for rich and poor is the same in stone and earthen structures."

It may be inferred from the form of the *Sankalpa*⁴ or the declaration of purpose that the consecrator of a

¹ कल्पतरु-भविष्यपुराणम् ।
स्वल्पे महति वा वित्तं फलमाद्य दरि-
द्रयोः ।

Quoted in the मठप्रतिष्ठातत्त्वम्, p. 667.

² चारुणे कृष्णधियाऽस्य सप्तजन्मनि
यत्कृतं ।
पापं विलयमाप्नोति नरकादुद्धरेत्
पितुः ॥
प्रासाद-पादे कृष्णस्य यावन्निष्ठानि
रेणुकाः ।
तावद्दर्शयन्वाणि वसते विष्णुसङ्गनि ॥
प्रासादे कृष्णदेवस्य चित्रकर्म करोति
यः ।
वसते विष्णुलोके यावन्निष्ठानि सा-
गराः ॥

Quoted in श्रीहरिभक्तिविलास,
p. 694.

³ कल्पतरु-भविष्यपुराणं ।
मृण्मयात् कोटिगुणितं फलं स्यादा-
रभिः कृते ।
कोटि कोटि गुणं पुण्यं फलं स्यादिष्ट-
कालये ॥
द्विपराद्गुणं पुण्यं शैलजे तु विदुर्बन्धाः ।
मृच्छैलयोः समं ज्ञेयं पुण्यमाद्यदरि-
द्रयोः ॥

Quoted in मठप्रतिष्ठातत्त्वम् । p. 667.

⁴ See extracts from मठादिप्रतिष्ठा
प्रयोगतत्त्वम् ।
Sabdakalpadruma, loc. मठ,
pp. 3154, 3168.

temple built of such perishable materials as thatch or wood is promised heavenly bliss for years ten thousand times the number of atoms composing the sacred structure, and in the case of more permanent materials like bricks the reward is tenfold greater and for stone the merit is again multiplied tenfold.

The rule of proportion is more elaborately worked out in the *Vishnu Dharmottara*¹ :—"Having built a temple for that supreme deity (Vishnu), the builder acquires the religious merit of the *Râjasuya* and *Aswamedha* sacrifices. This virtuous reward I have stated for an earthen structure. In case of a wooden structure the merit is hundredfold. In case of stone the merit again is tenfold of the preceding one,—tenfold of that in the case of iron, which again is multiplied hundredfold for copper. By the use of silver the builder multiplies the merit a thousandfold, and verily in the case of gold it is again multiplied a hundred thousandfold. By adorning with beautiful gems, the builder obtains eternal bliss."

II Selection of time. General rules for houses applicable.

4. The words used in the ancient literature of the Hindus for the temples of their gods denote the residence of the god. As the house of god, the temple comes under the operation of many rules relating to houses in general, to which are added some special rules relating to the former.

¹ विष्णुधर्मोत्तरे द्वितीयकाण्डे ।
कला वासस्तद्वत्तस्य देवस्य परमेष्ठिनः ।
राजसूयाश्वमेधानां फलेन सह यु-
ज्यते ॥
सुरवेद्यनि यावन्तो द्विजेन्द्राः पर-
माणवः ।
तावद्द्वैसहस्राणि स्वर्गलोके मदीयते ॥
प्रासादे दृष्टमये पुण्यं मयैतत् कथितं
द्विजाः ।
तस्माद्वाचमये पुण्यं लभे शतगुणं भवेत् ॥

ततो दशगुणं पुण्यं तथा शैलमये
भवेत् ।
ततो दशगुणं लोहे तासु शतगुणं ततः ॥
सहस्रगुणितं रोपे तस्मात् फलसुपा-
श्रुते ।
ततः शतसहस्रं वै सोवर्णे द्विजसन्तमाः ॥
अनन्तफलमाप्नोति रत्नचित्रे मनोहरे ।

Quoted in श्रीहरिभक्तिविलास,
p. 694.

The time for the construction of houses is the subject of ^{Auspicious time.} numerous texts, mostly on astrological grounds. The following texts, though relating to houses in general, are adduced by Gopala Bhatta apparently to indicate the proper time for the construction of temples also¹ :—

*Matsya Purana*² :—If a house (of god) is built by a ^{Months.} person in Chaitra, he gets disease ; if in Baisákh, he gets money and jewels ; in Jyaistha, death ; in Ashádh, servants and jewels, but no beasts ; in Srában, friendship ; in Bhádra, loss (of friends) ; in Asvin, death of a wife ; in Kártik, money and crops ; in Agraháyana, a devotee ; in Paus, there will be fear from thieves ; but he will

¹ Cf. “मृच्छेयु यो विधिः प्रोक्तो विनिवेशप्रवेशयोः ।
स एव विष्णुषा कार्थी देवतायतने-
वपि ॥”
कृत्यचिन्तामणौ ।

Raghunandana-Jyotistattvam,
p. 290.

² “मैत्रेयाधिमवाप्नोति यो मृच्छं
कारयेन्नरः ।
वैशाखे धनरत्नानि षोष्ठे मृत्युं तथैव
च ॥
व्याषाढे मृत्युरत्नानि पशुवर्जमवाप्नु-
यात् ।
श्रावणे मित्रलाभं तु शनि भाद्रपदे
तथा ॥
पौनीनाशं वासशुके कार्तिके धन-
धान्यकं ।
मार्गशीर्षे तथा भक्तं पौषे तत्क्षरजं
भयं ॥
लाभं तु वज्रशोविषादग्निं माघे विनि-
र्दिशेत् ।
काश्ववं फाल्गुणे मुचानिति कालं वरु-
णं ॥

चक्षिनी रोहिणी मूलमृगश्रवा च-
मैन्दवं ।

स्वाती चक्षोऽनुराधा च मृच्छारक्ष-
प्रमृश्यते ॥

आदित्य-भौमवर्जश्च सर्वे वाराः शुभा-
वहाः ।

वज्रवाघातशूलानि अतिपाप्मानिग-
च्छिके ॥

विष्णुभगवत्परिधानं वर्षे योगेषु का-
रयेत् ॥

श्वेते मैत्रे च माघेऽग्रे गान्धर्वोभिजित-
रोहिणे

तथा वै राजसावित्रे शुक्लर्णे मृच्छमा-
रभेत् ।

चन्द्रादित्यवसं कृत्वा लग्नं शुभ-
निरीक्षितं ।

शक्रोच्छ्रयादि कर्तव्यमन्यत्र परिवर्ज-
येत् ॥”

मत्स्यपुराणे ।

Quoted in श्रीहरिभक्तिविलास,
pp. 694-695.

know of profits from many directions, and fire in Māgh can be looked for ; gold in Phalgun and sons ; such is told of the effect of (particular periods of) time. The following

Asterisms. asterisms are auspicious in commencing a building :—Asvini, Rohini, Mula, the three Uttarās, Mrigashirā, Swāti, Hastā and Anurādhā. All days, except Sunday and Tuesday, are auspicious. All conjunctions, except

Conjunctions. the following, are also propitious :—Vajra, Vyāghrā, Shula, Vyatipāta, Atiganda, Vishkumbha, Ganda, and Parigha. A house should be commenced at one of the following parts of the day known as Muhūrtas :—Sveta, Maitra, Māhendra, Gandharva, Rohina and also Rāja and Sāvitrī. The erection of pillars should be performed at

Lagnas for pillars. auspicious *lagnas* or moments when the Sun and the Moon are favourable ; other moments should be avoided.”

Inauspicious time. *Hayasirsha Panchardra*¹ :—“ Building operations should not be commenced in the rainy season by a well-informed person ; nor at the end of the third part of dark fortnight, and in the first and second part of the bright fortnight. Of the *Tithis*, the fourth, ninth and the fourteenth are to be avoided. Tuesday is also to be left

१ “ वास्तुकर्म न चारभ्य वर्षाकाले भुवाणि चाव शस्त्रानि नैवतं शक्र-
विजा नता । दैवतं ॥
कृष्णपक्षे विभागान्ते शुक्लस्यादौ द्वि- पूष्यं पौष्णश्च सावित्रं वायव्यं वैष्णवं
तीयके ॥ तथा ।
चतुर्थी नवमी वर्षा तिथिश्चऽपि स्थिरांश्च स्थिरे लग्ने कर्तुं शोपचया-
चतुर्दशी । त्मके ॥
भौमस्य तु दिनं वज्रं करणं रिष्टि- केन्द्रे सौम्यपक्षो यस्य चिकोणे तु सुरो-
सञ्चितं ॥ तमः ।
क्षित्यन्तरीक्षदिव्योत्थैरुत्पानैर्भयपीडि- पापशोपचरस्थाने तदा कार्यं समा-
तं । रमेत् ॥
उपसृष्टं पदैश्चापि व्यतीपातवर्तनं तथा ॥ हयशीर्षे ।
चन्द्रनारानुकूले च कार्यं कर्म विजा- Quoted in श्रीहरिभक्तिविलास,
नता । p. 695.

out, for working on that day brings injury (or bad luck), and days taunted with dangers arising out of the earth, sky, or the heavenly bodies, and other calamities (as the death of a friend, &c.), and days marked with the portentous Vyatipátayoga, and days made ominous by some planet as the Saturn, &c., are to be avoided. A well informed man should do his work when the moon and stars are favourable. And so on. (Here follow some more astronomical details, which the curious may examine in the text given below.)

5. Raghunandana, however, does not admit the applicability of the above text of the *Matsya Purana* in connection with temples. In his *Vástuyāga-tattvam*,¹ after having quoted the above text in almost the same words, he proceeds thus :—

Dissent of
Raghunan-
dana.

“The results ascribed to the months of *Chaitra*, &c., appertain to a human dwelling. In the case of a temple (*devagriha*), however, on account of the supremacy of the time for the consecration (*pratishthā*) that time is adopted :² Thus, too, a text of the *Devi Purāna* quoted in the *Kalpataru* :—‘That time, which is proper for the planting of the consecration (*pratishthā*) flag of a god, is also auspicious for laying the foundation-stone (of the temple) of that god.’”

Again, in his *Jyotistattvam*, Raghunandana observes that the *Matsyapurāna* has laid down that the months of *Māgha*, *Phālguna*, *Chaitra*, *Baisākha*, and *Jyaistha* only are auspicious for *pratishthās* of all gods. In the *Pratishthā Samuchchaya*, however, there is a direction that even the month of *Ashādha* is eligible for *pratishthā*, whereupon the *Devi Purāna* declares that *pratishthā* of the goddess *Durga* may be performed even in *dakshināyana*, or when

¹ Raghunandana, p. 608.

² See also *Jyotistattvam* of Raghunandana, p. 290.

General rule as to time how far applicable to temples.

the sun is in the southern equinox. To explain this apparent contradiction between rules laid down for the building of dwelling-houses and those for the building of temples, Raghunandana remarks that the direction given in *Kṛittyā Chintamani*¹—that the same rules are to be observed in installation of dwelling-houses and temples—relates to the auspicious moon, &c., and not to the particular months in which the ceremonies are to be performed. (For particulars of auspicious astrological conditions, see Raghunandana's *Jyotistattvam*, p. 290, and *Vāstu Yāgatattvam*, p. 608.)

III. Selection of site.

6. The selection of a site for a temple depends primarily upon rules common to all houses. The technical term for the site of a dwelling is *vastu*, the word also denoting the dwelling itself when completed. *Vāstuvidyā* or architecture is the most important branch of the *Silpa Shāstra* of the Hindus, and elaborate rules are laid down therein for the selection of a proper site for a house. The following summary, by Ramraz, of the rules laid down in the *Mānasāra*, the most celebrated treatise on the *Silpa Shāstra* which has come down to us, is the best example which can be offered of these rules :—

Ramraz's summary of

Rules in *Mānasāra*.

7. "The third chapter of the *Mānasāra* professes to treat of the nature and qualities of the ground on which buildings are to be erected. It opens with the definition of a *vastu*, a term used to express the ground on which any superstructure is raised, as signifying that which is inhabitable, and directs a careful examination of the site to be selected for building, as to its fitness for the purpose from its colour, smell, taste, form and touch. It then goes on to divide the soil into four sorts, and to point out in the order of superiority what is considered auspicious for the residence of each of the four classes, with reference

Classification according to class of owner.

¹ See Note 1, p. 47.

to the five qualities above-mentioned. Nay, some have even gone so far as to forbid the lower classes from occupying the ground suited to the higher, and *vice versâ*, on pain of incurring the severest vengeance of heaven ; but the principle on which these distinctions are founded is altogether nugatory. It signifies little whether the ground designed for the residence of a Brahman be square or oblong, white or red, sweet or sour, provided that the situation is convenient, and that it furnishes a firm bottom for laying the foundation ; nor is it possible to find a place possessing all the qualities required by this prescription for the residence of any one of the classes ; and in order perhaps to obviate this difficulty, another more general classification of the soil into three sorts is added, with the declaration that the two first will answer the purposes of all classes of men without exception.

“The best sort of ground should abound with milky trees 1. Good. full of fruits and flowers ; its boundary should be of a quadrangular form, level and smooth, with a sloping declivity towards the east, producing a hard sound, with a stream running from left to right, of an agreeable odour, fertile, of an uniform color, containing a great quantity of soil, producing water when dug to the height of a man’s arm raised above his head, and situated in a climate of moderate temperature. The ground possessed of qualities directly opposite to those mentioned above is the worst, and that which has a mixed nature is the middling.”¹

2. Medium.

The ground to be avoided is described in a special manner 3. Bad. as follows :—“That which has the form of a circle, a semi-circle, containing three, five, or six angles, resembling a trident or a window, shaped like the hinder part of a fish, or the back of an elephant, or a turtle, or the face

¹ Ramraz’s Essay on the Architecture of the Hindus. London, 1839, pp. 15—17.

Other authorities.

Rules as to colour,

of a cow, and the like, situated opposite to any of the intermediate quarters—north-west, and the like—abounding with human skulls, stones, worms, ant-hills, bones, slimy earth, decayed woods, coals, dilapidated wells, subterraneous pits, fragments of tiles, limestones, ashes, husks of corn, and exposed to the wafted effluvia of curds, oil, honey, dead bodies, fishes, &c.; such a spot should be avoided on every account." Similar provisions will be found in the *Matsya Purana*¹ the *Devi Purana*, the *Hayasirsha Pancharātra* and in the *Brihat Samhita*.² The roots of these regulations can be traced back to the *Grihya Sutras* of Gobhila and Ashwalāyana.

8. Taking the qualifications in the order enumerated above we find, as to colour, white approved for Brahmins³ and red for Kshattriyas.⁴ As regards the Vaisyas there is a conflict of authority. According to Gobhila⁵ the black coloured soil belongs to the Vaisya, but Ashwalāyana⁶ predicates the yellow colour to that caste. Both sages agree in omitting all mention of the Sudra caste, but later writers⁷ have filled up the gap by allotting the yellow

¹ Quoted in श्रीहरिभक्तिविज्ञान, pp. 696-697.

² By Varaha Mihira, Adhyaya, 53.

³ गौरपात्र्य ब्राह्मणस्य ।

"The site of which the dust is white, for the Brahmin." *Gobhila Grihya Sutra*, 4, 7, 5. Bib. Ind., p. 707 cf. *Ashwalayana Grihya Sutra*, 2, 8, 5-6. Bib. Ind., p. 146.

⁴ लोहितपात्र्य क्षत्रियस्य ।

"The red-dust (site) for the Kshattriya." *Gobhila Grihya Sutra* 4, 7, 6. Bib. Ind., p. 707 cf. *Ashwalayana Grihya Sutra*, 2, 8, 7. Bib. Ind., p. 146.

⁵ कृष्णपात्र्य वैश्यस्य ।

"The black-dust (site) for the Vaisya." *Gobhila Grihya Sutra*, 4, 7, 7. Bib. Ind., p. 708.

⁶ पीतं वैश्यस्य ।

"Yellow, of the Vaisya."

Ashwalayana Grihya Sutra, 2, 8, 8. Bib. Ind., p. 146.

⁷ क्षेता रक्ता तथा पीता कृष्ण चैवानुपूर्वतः ।

विप्रादेः ब्रह्मणे भूमिरतः कार्यं परीक्ष्यते ॥

Matsya Purana, quoted in श्रीहरिभक्तिविज्ञान, p. 696.

क्षेताश्च पीतकृष्ण विप्रादीनां प्रशस्यते ॥

Hayasirsha Pancharātra quoted in श्रीहरिभक्तिविज्ञान, p. 697.

colour to the Vaisya and the black colour to the Sudra, as most harmonising with the position of the fourth caste in the Hindu system. The test of smell for soils I do not ^{Smell,} find mentioned in the *Grihya Sūtras*, but certain odours are declared by the *Hayasirsha Pancharātra*¹ to render the soil propitious for all the castes generally. As regards the odours appropriate to particular castes, the same treatise²⁷ mentions those of clarified butter, blood, food and spirituous liquor, for the four castes respectively, which coincides with the directions given by *Varāha Mihira*.³

9. As regards the quality of taste, the *Grihya Sūtra* ^{Taste,} of Gobhila is silent. *Ashwalāyana*,⁸ in the text as now extant and as understood by the commentators, predicates the sweet taste (*Madhurāśvāda*) to be propitious to the three twice-born classes. In later times, however, a taste was allotted to each of the four castes, in the descending scale, according to their respective status. Thus the *Matsya*

वितरन्तपोतकृष्णा विप्रादीनां प्रशस्यते
भूमिः ।

Bṛihat Samhita. Adhyaya 53,
al. 96. Bib. Ind., p. 274.

¹ वसुमीर्षे ।

काष्ठीरचन्दनामोदा कर्पूरामुदमनि-
नी ।

कमलोत्पलमन्था च जातिचन्द-
नमिनी ॥

पाटला-मल्लिका-मन्था नागकेसर-
मिनी ।

दक्षिणीराज्य-मन्था च मदिरासव-
मिनी ॥

सुमन्त्रि त्रीहिमन्था च शुभद्रव्यमन्था
च या ।

सर्वेषां वसिनां भूमिः सर्वसाधारणी
मता ॥

* * * * *

* * * * * विप्रादीनां प्रशस्यते ।
आद्याद्यगन्धमन्थानां सुखमन्था तु या
भवेत् ॥

Quoted in श्रीहरिमङ्गलविलास,
pp. 696, 697.

* * * * *

विप्रादीनां प्रशस्यते भूमिः ।

मन्थश्च भवति यस्या

दृढवधिराज्यमन्थसमः ॥

"A smell like *ghae*, blood, food and spirituous liquor, denotes ground suited to Brahmins and the rest in succession." *Bṛihat Samhita*, Adhy. 53, 96. Bib. Ind., p. 274. J. R. A. S., N. S., Vol. VI, p. 296.

⁸ *Grihya Sūtra*, 2, 5, 6, 7, 8.
Bib. Ind., p. 146.

Form,

Purāna, *Hayasirsha Pancharātra*¹ and *Brihat Samhitā*² coincide in allotting the sweet, astringent, sour and bitter soils to the Brahmin, Kshattriya, Vaisya and Sudra respectively. As to form or shape, Gobhila³ recommends an oblong or circular shape for the residential site without any distinction of caste. A long list is given in the *Hayasirsha Pancharātra*⁴ of the shapes to be avoided, which closely corresponds with the list given in the *Mānasāra*. It is to be observed that the circular shape recommended by Gobhila is directed to be avoided by the later authorities.

Touch,

I have been unable to trace any further authorities dealing with the qualifications of soils as felt by the touch, except the incidental mention of smoothness in the *Brihat Samhitā*⁵ as a desirable quality in this connection.

¹ मास्त्रे । * * * विप्राणां मधुरा-
खादा कषाया चचियस्य च ।
कषाय-कटुता महदैश-शूद्रेषु मस्यते ॥
हयजीर्ण । * * विप्रादीनां प्रम-
स्यते । * * * * *

मधुरा च कषाया च अस्वा च कटुका
च या ॥

Quoted in श्रीहरिभक्तिविलास,
pp. 696, 697.

² अनुवर्षे नृदिकरी

मधुरकषायाचकटुका च ॥

"Likewise, soils sweet, astringent, sour and bitter promote the weal of the four castes respectively."

Brihat Samhitā, Adhy. 53, sl. 97.
Bib. Ind., p. 274. Cf. translation in J. R. A. S., N. S., Vol., VI,
p. 296.

³ शादा-सन्धितम् ॥ ४ ॥ ७ ॥ १२ ॥

मच्छल-दीप-सन्धितं वा ॥ १२ ॥

Grihya Sutra, Bib. Ind., pp.
709-710.

⁴ Quoted in श्रीहरिभक्तिविलास,
p. 697.

⁵ मस्योपधिदुमस्यता मधुरा सुमन्वा
चिग्धा समा न सुविरा च मही नरा-
याम्

अप्यध्वनि अमविनीदसुपागतानां

धत्ते त्रिधं किमुत शाश्वतमन्दिरेषु ॥

५२ ॥ ८८ ॥

"88. A level ground, sweet, of good odour, decked with good herbs, trees and plants, smooth and not full of cavities, bestows happiness on those even who come to rest themselves on it from the fatigue of travel; how much more then on those who have a permanent home on it?" *Brihat Samhitā*, 53, 88. J. R. A. S., N. S., Vol. VI., p. 294.

A passage in the *Hayasirsha Pancharātra*¹ directs the And sound. avoiding of soil which is *duh-svana* which may be interpreted to mean either "producing sound with difficulty" or "producing evil sound." Ramraz, it will be observed, mentions another classification of soils into three de- Other qualities. scriptions according to the possession of certain physical characteristics, and I have, in the notes to the same passage, shewn how far similar provisions can be found in the sacred literature of the Hindus. (See §§ 12 & 13, *infra*.)

10. Another test for the fitness of soils mentioned in ancient treatises, though not included by Ramraz in his summary, is thus described in the *Matsya Purāna*²:—
"A hole measuring one cubit (in depth) having been well plastered with mud, a saucer of unbaked earth is to be filled with *ghee* and four wicks lighted therein, for testing the quality of the soil. If the wicks burn brightly in the four directions of east, &c., the ground is fit for the four castes,—Brahmin and the rest respectively. If the brightness is on all four sides then the ground is fit for all." The same rule is laid down by *Garga*³ and *Vardha Mihira*.⁴ The same two writers describe another test consisting of placing in a pit for one night the flower appropriate to the particular caste. If it remains fresh in the morning the ground is fit for that caste, otherwise not.⁵ Test by lighting a lamp in a hole, Or by putting a flower.

11. Many of the provisions previously mentioned may at first sight appear useless and unmeaning, and they are The rationale of seemingly useless tests.

¹ Quoted in श्रीहरिभक्तिविलास, यस्यां दिशि प्रचलति चिरं तस्यैव सा
p. 697. शुभा ।

² Quoted in श्रीहरिभक्तिविलास, Quoted by Kern in J. R. A. S.,
p. 696, also in वास्तुयामतज्ञं N. S., Vol. VI, p. 295.
Raghunandana, p. 607. ⁴ *Brihat Samhita*, Adhy. 53, sl. 94. Bib. Ind., pp. 273, 274, J. R. A. S., N. S., Vol. VI, p. 295.

³ चाने वा क्षण्ये पात्रे दीपवर्ति-
चतुष्टयं । ⁵ Garga, quoted by Kern in J. R. A. S., N. S., Vol. VI, p. 295. *Brihat Sanhita*, Adhy. 53, sl. 95.

viewed in that light by Ramraz. It is difficult, however, to decide absolutely upon rules of practice embodying the experience of many ages, as the progress of Western science has revealed the truth of many things which had been previously set down to the credit or discredit of oriental prejudice or imagination. It may be that some sound principle underlies particular rules which at first sight appear to be due to mere superstition. Thus it is conceivable that the fading of a flower would denote the heat-retaining capacity of the soil. So the burning bright of the lamp might be an index to the purity of the soil from bad exhalations and their presence indicated by its burning dim, as in the familiar instance of lights let down into old wells, &c.

Three classes
of soil found
by test of
fertility.

12. The test of fertility is mentioned in the *Grihya Sutras* of *Gobhila* and *Ashwaláyana*. A soil which is not (*anushara*) barren is recommended.¹ In the pastoral as well as the agricultural state, the fertility of the soil would no doubt be an attraction and advantage to the new settler. I believe these regulations to date from the pastoral times, recommending as they do the presence of water, the shade of large forest trees and the existence of particular species of herbs and grasses.² In the agricultural state the test was subsequently modified to suit the later requirements, as may be seen from the passage in the *Matsya Purana*,³ which directs seed of all kinds to be sown on tilled ground ; if they germinate in three, five or seven nights, the soil is classed as habitable in descending degrees ; but if the seeds take more than seven nights to germinate

¹ *Gobhila Grihya Sutra*, IV, 7-8.
Bib. Ind., p. 708.

Ashwaláyana Grihya Sutra, II,
7, 3, 4, 5, 6.

Ashwaláyana, II, 7, 2.
Bib. Ind., p. 142.

² Quoted in *বীজবিভক্তিবিজ্ঞান*,

³ *Gobhila Grihya Sutra*, IV, p. 696.
7, 2, 3, 4, 8, 9, 10, 11.

then the soil is classed as bad, and ought to be avoided for dwelling purposes.

13. Rules are also laid down evidently intended to test the solidity of the soil and its consequent fitness for the construction of buildings. Thus *Ashwaláyana*¹ directs a hole knee-deep to be dug and re-filled with the same earth. If there is an excess of earth, the site is good; if the hole is just filled, the site is indifferent; but if there is a deficiency, the site is bad. At sunset the hole is to be filled with water. If in the morning there is water therein, the soil is good; if the water be gone but the soil be moist, the soil is pronounced indifferent; but if the hole be dry, the soil is condemned.² Ramraz in his treatise gives the first of these rules on the authority of *Casyapa* :—

Similar classification by test of solidity.

“Having dug a pit—a *hasta* in depth—in the middle of the ground, return the earth into it, and according to the space which the latter may now take up with reference to that which it occupied before the digging of the pit, whether more, less, or the same, the ground should be considered as good, bad or indifferent; the good and indifferent sorts are acceptable, but the bad should by all means be avoided.”³

The *Matsya Purana*⁴ and *Hayasirsha Pancharātra* also give the first rule without apparently taking notice of the second.

Varāha Mihira, however, has given both rules,* the first almost in the same words,—the second with a slight variation which does not touch its principle.

“A hole measuring one cubit having been dug in the midst of the house-site and again entirely filled up, if

¹ Grihya Sutra, II, 8, 2, 3, 4, 5.
Bib. Ind., pp. 145-146.

Bib. Ind., p. 146.

² Ramraz, Essay, p. 17.

³ *Ashwaláyana Grihya Sutra*, II, 8, 4, 5.

⁴ Quoted in *बौद्धविमर्शविज्ञाप*, pp. 696-697.

there is a deficiency it is bad, if equality indifferent, but excess is good.”¹

“Or fill the pit with water. If, having walked a hundred paces, you find on returning the water not diminished, it is a lucky token ; which it is also when an *adhaka* of earth dug out weighs sixty-four *palas*.”²

A universal
maxim of
selection.

14. Ramraz, as we have seen, animadverts strongly on the apparently artificial and capricious distinctions of “colour, smell, taste, form and touch” in the soil to be selected for a building site, and he imagines that the more general classification of the soil into three classes had been adopted to obviate the difficulty created by the former more elaborate classification. Now it is one of the most redeeming features of the sacred literature of the Hindus that it contains within itself sufficient to satisfy the needs of every class of followers—whether their thoughts move in the lowest plane of superstition or the highest plane of rationalism. *Varāha Mihira* in the midst of the enumeration of various tests by omens and auguries as to the auspiciousness of particular sites, delivers himself in the following strain which the most enlightened of moderns could not demur to :—

And that (site) too is auspicious (to the builder) whose heart delights therein.”³

Effect of
progress :

15. In the most primitive times the worship of fire would be carried on at the domestic hearth and the worshipper would offer his own food to the gods before

¹ ऋधमद्ये दृष्टमिति,
खाला परिपूरितं पुनः खलम् ।
यद्युत्तममिदं तत्
समे समं धन्यमधिकं यत् ॥
Brihat Samhita, Adhy. 53, sl. 92.

² खलमद्यवाग्युषं
पद्मस्तमिलामतस्य यदि नोनम् ।

यद्यन्यं यद्य भवेत्
पलान्यपामादकं चतुःषष्टिः ॥
Brihat Samhita, Adhy. 53, sl. 93.

³ तमस्य भवति ह्यभद्रं
यस्य च यस्मिन्मनो रमते ।
Bib. Ind., p. 274. Brihat Sam-
hita, Adhy. 53, sl. 95; J. R. A. S.,
N. S., Vol. VI, p. 295.

he partook of the same himself. Under such circumstances the single hut raised for residence would also cover the hearth and the altar. With further progress, the cooking would be relegated to a separate shed on grounds of convenience and safety. Thus Ashwaláyana¹ directs the house-holder to construct his cook-house to the north and his assembly-house to the south of the sleeping-house.

In later times, when image worship became prevalent, special rules and directions were laid down for the location of temples as also for the location of houses with reference to the former. I shall first deal with the latter class of rules, as they are fewer in number. In the sense that temples are god-houses, these rules may also govern the site of a temple proposed to be built.

It is prohibited for the door of a house to face a temple or image of a god² on pain of destruction; and the vicinity of a temple³ as a dwelling-site is condemned on the ground that it is calculated to cause anxiety of mind.

16. Coming now to special rules as to the site of temples, we find a direction in Menu⁴ to erect temples on the common boundaries of villages. The primary object of this rule, however, is the secular one of preserving good evidence of the boundary as appears from the context and from the commentaries.

The *Hayasirsha Pancharātra*⁵ recommends that a temple should not be built so as to encroach upon the boundaries

Social

and religious.

Special rules.
Village boundaries as proper sites for public temples.

¹ Grihya Sutra, II, 7, 7, 9.; Bib. Ind., p. 144.

² विनाशो देवता-विज्ञे। Matsya Purana, quoted in Sabdakalpadruma, loc. 'Vastu,' p. 4259.

भवति विनाशश्च देवता-विज्ञे।

Brihat Samhita, Adhy. 53, sl. 78; Bib. Ind., p. 271. J. R. A. S. N. S., Vol. VI, 292.

³ उद्देशो देवकुले। Brihat Sam-

hita, Adhy. 53, sl. 80; Bib. Ind., p. 273. J. R. A. S., N. S., Vol. VI, p. 294.

न देवधूर्तसचिवसल्लराणां समीपतः।
कारयेद्भवनं प्राज्ञो दुःशशोकभयं यतः॥

Matsya Purana, quoted in Sabdakalpadruma, p. 4260, loc. 'Vastu.'

⁴ VIII, 248.

⁵ Quoted in the त्रीहिरिभक्ति विश्वास, p. 696.

of another pre-existing temple or building, and that the new erection should be placed at a distance of double the height of the prior structures. This rule is an amplification of the one already noticed on the authority of the *Matsya Purána*¹ and the *Brihat Samhita* which condemns the vicinity of a temple as unfit for a dwelling-site.

Fitness of the
soil how ascer-
tained.

According to the *Devi Purána*,² the temples of the superior gods—Vishnu, Rudra, Brahmá and others—should be established in auspicious places, as ascertained by smell, taste, colour, holes, &c.; otherwise fearful consequences ensue. This, in the absence of any special directions for temples, must be referred back to the tests already detailed about dwellings in general. The point is expressly ruled by Varáha Mihira³ :—“The several sorts of soil, which have been previously mentioned, when treating of house-building, as suited to Brahmans and the rest, are likewise recommended to them in the construction of temples for gods.”

Surroundings
acceptable to
gods.

17. The same author gives the following description of the fit surroundings of temples which are thus described in poetic language by Varaha Mihira⁴ :—

“The gods use to haunt those spots which by nature or artifice are furnished with water and pleasure-gardens.

“Lakes where groups of lotuses like umbrellas ward off the sun’s darting beams, and the waters receive access of brightness by the rows of white water lilies pushed aside by the shoulders of swans ; where swans, ducks, curlews and paddybirds utter their resounding notes, and fishes repose in the shade of Niculas on the brinks ; places where rivers flow, having curlews for their tinkling zone, singing swans for their melodious voice, the water-

¹ Ante, p. 59, notes 2 and 3.

² Quoted in *বৌদ্ধভিক্ষুবিজ্ঞান*,
p. 606.

³ *Brihat Samhita*, Adhy. 56,

sl. 9. Bib. Ind., p. 307. J. R. A. S.,
N. S., Vol. VI, p. 318.

⁴ *Brihat Samhita*, Adhy. 56, sl.
38. Bib. Ind., p. 307.

sheet for their cover, and carps for their belt ; regions where streams have blooming trees on the margin, comparable to ear ornaments, confluences not unlike to, buttocks, sandy banks like to high swelling bosoms and merry laughter from the swans ; tracts of land in the neighbourhood of woods, rivers, rocks and cataracts ; towns with pleasure-gardens ; it is such grounds the gods at all times take delight in." (J. R. A. S., Vol. VI., p. 317.)

18. In the ninth chapter of the *Mānasāra Vāstu*,¹ in the course of the description of the eight classes of villages or towns, detailed instructions are given as to the location of shrines or temples for *Vishnu*, *Shiva*, *Chāmundā*, *Mahā Kāli*, *Brahmā* and other deities, and the following general directions are given in the same work :—

Location of
temples of
particular
deities.

"The temples of *Vishnu*, in whatever form that deity may be worshipped, should be erected within the village facing towards the east, except in the incarnation of *Nara-Simha* (the Man-Lion), whose temple should be built without the wall with its face turned from the village or town. * * * * * If the emblem of *Shiva* (*Linga*) is to be consecrated according to the *Siddhanta Agama*, it may be placed within the village ; if otherwise, it should remain without. In the case of *Vishnu*, too, if the idol is to be consecrated according to the system of *Vayghānasa*, it may be admitted within ; but if according to the doctrines of *Pancharātra* it should be placed without the village. The shrines of *Durgā*, *Shanmucha* and the objects worshipped by Jainas and Bauddhas, should be erected without the village." ²

¹ Ramraz, Essay, pp. 42, 43, 44, 45.

² Ramraz, Essay, pp. 45-46.

देवतायां देवतायां स्थातुं। quoted in
अतिशय, p. 290.

ईशाने देवतागारं। Matsya Purana,
quoted in the Sabdakalpadruma,
p. 4261, loc. वास्तु

Site of domestic chapels.

19. As to domestic chapels, their location is directed¹ in the north-east corner of the dwelling; and in a later passage² the same author prohibits the house-holder, desirous of property, from sleeping above deities. This is an easily comprehended rule of decorum applicable to all classes of divine dwellings. It is in consequence of this rule that the room for the residence of the deity (*thākurgar*) is so constructed that no room be situated above it. The same holds true of the *thakur dalan* or *chandi mandap*, the hall of worship which is similarly constructed. From the necessity of periodically installing and removing heavy and large images, the latter is necessarily built on the ground-floor.

IV. Purification of soil by (a) ploughing.

Its object and development into ceremony of *bhumiparigraha*.

20. After the selection of the *vastu* or site for dwelling, it was an ancient practice to plough the land. The practice could not exist in the pastoral age, and it is noteworthy we find no mention thereof in the *Grihya Sutra* of Gobhila. Ashwaláyana,³ however, directs the thousand-furrowed ploughing of the site. The primary object in ploughing is to clear and level the land. In later times, however, the process came to be enveloped in an elaborate ritual, and the whole ceremony is now styled *Bhumi-parigraha* or taking possession of the land. *Varáha Mihira*⁴ alludes to the most salient features of the latter-day ritual, namely the ploughing, the sowing of seeds, the grazing of the resulting crop by cows and the assembly of Brahmins. Fuller details are given in the *Hayasirsha Pancharátra*⁵ as follows. On an auspicious day, the priest offers on the

¹ देवानां देवस्थानं। Brihat Samhita; Adhy. 53, sl. 118; Bib. Ind., p. 278. J. R. A. S., N. S., Vol. VI, p. 299.

² Brihat Samhita; Adhy. 53, sl. 124; Bib. Ind., p. 279. J. R. A. S., N. S., Vol. VI, p. 300.

³ Grihya Sutra, II, 8, 9; Bib. Ind., p. 147.

⁴ Brihat Samhita; Adhy. 53, sl. 98; Bib. Ind., p. 274. J. R. A. S., N. S., Vol. VI, p. 296.

⁵ Quoted in श्रीहरिमहिमविज्ञान, pp. 697-8.

outer boundary of the selected land an oblation to the evil spirits. Stakes are then driven into the ground and an invocation addressed to the evil spirits to depart from the place as it was about to be appropriated to the use of Hari. The purification of the ground is then commenced by performing several *homas* or fire-oblations, after which a pair of brown oxen are yoked to a plough made of *Asan* wood, and auspicious seed sown after ploughing. When the seeds have grown, the field is to be grazed over by cows on an auspicious day, again ploughed and levelled, when the house may be begun to be built.

(b) Sowing of seed and crop to be grazed over by cows.

21. The *Mānasāra Vāstu*¹ gives some further details upon the same subject :—

Details as to ploughing.

“A plough must be made of the *Khadira*, *nimba*, or of the wood of any other milky tree. It must be from one to one and-a-half *hasta* in length, with a tapering point resembling the leaf of a bamboo, furnished with a share of three, five, or six *angulas* long and two thick, and with a beam of three yards in length. This machine is to be yoked to a pair of oxen of equal size and of the same colour, either white, black, red, or gray. The oxen should be strong and such as have not exceeded the middle age. Oxen with horns bent down, maimed, weak, meagre, toothless, or lame should be rejected ; those with a white spot on their legs and foreheads, with eyes resembling the petals of the lotus, are to be preferred. They should be decorated with fillets and the like and their horns and hoofs with gold or silver rings. The *Sthapati*, clad in fresh garments, and adorned with garlands of flowers, waits the auspicious moment to present his offerings to the deity, and then guiding the oxen draws the first furrow. After this, *Sudras* hired for the purpose complete the ploughing of the whole ground.

¹ Ramraz's Essay, pp. 17:18.

Motive for
letting the crop
to be grazed by
cows.

22. *Káśyapa*¹ enters into a minuter description of the ploughing machinery, which it is not necessary to reproduce ; but the following passage from the same author is of interest, as explaining the religious motive for allowing the crops to be grazed over by cows² :—

“ Having yoked the oxen a little more to the right than to the left of the pole or towards the right hand of the driver, and having recited the appropriate prayers, let furrows be drawn towards the east or west, the grass being plucked out in the first instance. Let sesamum seeds, pulse, and kidney beans be sown, with incantations pronounced over them, and let due reverence be paid to the spiritual teacher, and the oxen and the plough, to which they are attached, presented to him. When the crops are matured and the flowers in bloom, let them be grazed on by cattle, and let cows remain on them for one or two nights. The ground will become purified by the froth flowing from the mouths of the cows and by their ordure, after which you may commence building in the centre thereof.”

(c) Ascertain-
ing cardinal
points.

23. The next important step is to ascertain the cardinal points which is indispensably necessary in the construction of a Hindu building for the purpose of giving it the auspicious aspect and avoiding its facing any of the intermediate points which are considered inauspicious. The cardinal points of the compass are ascertained by a very simple method from the shadow of a gnomon, which is thus described in the *Mānasāra Vāstu*³ :—

“ On a smooth level piece of ground is erected a gnomon,” which, “ according to some, should be of sixteen *angulas* in height, and of the same diameter at the bottom ; the whole should be shaped like the leaf of an opening

¹ Ramraz's Essay, p. 18.

² Ramraz's Essay, p. 19.

³ Ramraz's Essay, pp. 19, 20.

bud, tapering gradually from the bottom to the top." Around this a circle is drawn with a cord of twice the height of the gnomon, by fixing one end of it to its base and carrying the other around it. Points are marked in the circumference where the shadow of the gnomon projects, both in the forenoon and afternoon, that is at any given hour after sunrise, and at the same time before sunset; and between these points a right line is drawn so as to join them; the point marked by the morning shadow will show the east and that marked by the evening shadow the west. Then, from each of these two points, and with a radius equal to the distance between them, describe two more circles cutting each other, and resembling (in their points of intersection) the head and tail of a fish, between which draw a right line, which will point to the south and north. Again, from the southern and northern points, which touch the circumference of the inner circle respectively, and with the same radius, describe two more circles, and the points of intersection on the two other sides, will indicate the east and west." The intermediate points are ascertained by similar processes, and the text-books also contain various directions for the purpose of certifying the variation in the shadow caused by the irregularity of the sun's motion in the ecliptic. ¹

24. According to the *Hayasirsha Pancharātra*, ² when the directions have been all marked out on the spot with thread-marks, the spot should be further sanctified by feasting Brahmins thereupon. Although the operations hereinbefore recited may be supposed to have cleansed the ground from its superficial impurities, the Hindu writers discuss the existence underground of impure and inauspicious foreign substances technically called

(d) Feasting
Brahmins.

(e) Eradicating
underground
impurities or
thorns.

¹ Ramraz's Essay, pp. 20, 21. ² Quoted in श्रीहरिमन्त्रिविद्यास, p. 698.

Omens revealing thorns.

salyas or thorns, and the means of eradicating the same. It is observed in the *Matsya Purana*¹ that when the builder of a house has extensive itching over his body at the commencement of the construction, it indicates the existence of *thorns* underground which ought to be removed, for the thornful (ground) is the cause and the thornless (ground) the remover of fear. There is a rather enigmatical passage in the *Hayasirsha Pancharātra*,² which reads thus :—“(The architect) should indicate the *thorns* of the building from the altered state of particular limbs of the owner. When omens are seen, or sounds are heard, or the name is proclaimed, the *thorns* are to be referred to the same.” The obscurities of the above are cleared by comparing it with the following passage in the *Brihat Samhita* of Varāha Mihira³ :—

“When the edifice is half-built or finished, let the architect enter it and observe the omens,—on what spot the house-owner happens to stand, and what limb he is touching.

“Should, on that moment, an ominous bird, being scorched by the sun (*i.e.*, facing the quarter in which the sun is standing at that period), emit hoarse sounds, you may predict that on the spot (where the house-owner is stationed) there is a bone of a member corresponding to the member touched.

“And by other animals, like elephants, horses, dogs, shrieking in return at the time of augury, may be known that the specified spot contains a bone from such an animal and belonging to a corresponding limb of the body.

“The sound of an ass when the measuring line is being extended announces that there is a bone hidden. You

¹ Quoted in श्रीहरिभक्तिविलास,
p. 698.

² Quoted in श्रीहरिभक्तिविलास,
p. 698.

³ Adhyaya, 53, sl. 105—108.

may predict that there will be another 'wounding point,' (as it is termed,) on seeing a dog or jackal leaping over the measuring line."

25. The ceremonies which follow the cleansing and purification of the ground are collectively styled the *Vástuyāga*. We have already seen that the word *vastu* means the site for a dwelling and also the dwelling itself. *Vástospati* is one of the names assigned to Indra in the Vedas and current for that purpose even in the day of the lexicographer Amara. One of the later conceptions, however, of the Vedic religion was that of a separate *Vástospati* or house-protector regarded as presiding over the foundation of a house to whom hymns are addressed in that connection.¹

V. The *Vastu*,
yāga cere-
monies.

The Vedic
notion of
Vástospati.

26. In the *Gobhila Grihya Sutra*² there are directions for establishing the sacrificial fire in the middle of the site, and the performance of sacrificial rites with a black cow or white goat, and the hymn in honour of *Vástospati* is expressly directed to be used in offering the first oblation. The commentators understand this rite to be performed after the construction of the house had been completed, but I am inclined to think that the more reasonable interpretation is to make it performable before.

Directions of
Gobhila for
Vástuyāga.

27. Ashwaláyana,³ whilst being silent on the above points, gives other directions in which we can trace further developments of the ceremony. According to him, when the land has been well ploughed, a square or oblong portion should be measured out and prepared for the sacrifice. This is afterwards to be sprinkled with water from branches of the *śami* or *udumbara* tree, the priest walking round thrice, reciting the *Santatiya* hymns of the Rig

Other direc-
tions of Ashwa-
láyana.

¹ Rig Veda, VII, pp. 54-55.
Muir's Sanskrit Texts, Vol. V,
p. 273 note.

² *Gobhila Grihya Sutra*, IV, 7,
27-41; Bib. Ind., pp. 716-723.

³ *Grihya Sutra*, II, 8.—Bib.
Ind., p. 147, *et seq.*

Veda. He is also to go round thrice with a water-pot pouring a continuous jet of water, and reciting the hymns of the Rig Veda, *Apo hishtthá*, &c. In the holes dug for the posts aquatic plants are to be placed, whereby the householder is promised protection from fire. These plants being incombustible may serve as emblems for this desire for protection from fire ; but seeing how difficult it is to account for such a result, it might be worth enquiring whether these plants have preservative action in protecting the timber underground against the operations of natural influences or the attacks of insects. At the hole for the central post, the additional ceremony is performed of putting in blades of *kusa* grass and sprinkling it with water mixed with sacrificial grains. When the central post is placed in its hole an invocation is addressed to it, expressing a desire for the prosperity of the householder. After this a water-pot is to be placed on four stones covered with *durvá* grass, reciting particular texts and water poured therein to the accompaniment of a hymn invoking the presence of the water-god, Varuna. Then the place is again sanctified by the priest walking thrice round reciting the *Santatiya* hymns and sprinkling water in which sacrificial grains and gold had been steeped, and also perambulating the premises with a water-pot giving a continuous jet of water. Finally the householder is directed to cause a cooked offering of rice to be prepared in the interior of the house, to offer the same with the recitation of the previously-mentioned texts¹ to *Vástospati* to offer the remainder of the cooked rice as a feast to the Brahmins and cause them to pronounce a blessing on the house.

Blessing by
Brahmins.

Ceremonies
prior or subse-
quent to con-
struction.

28. Whilst some portion of the ceremonies above enumerated are clearly intended to be performed before the

¹ *Ante*, p. 67.

erection of the house, others by the context are shewn to be accompaniments of the erection or to follow its completion. In modern practice the *Vástuyāga*, the principal of these ceremonies, is performed at the option of the householder either before the erection or afterwards at the time of the formal entry into the completed structure.

Modern practice as regards *Vástuyāga*.

29. The Vedic conception of *Vástospati* was developed in later days into a belief in the existence of a *Vástunara* or *Vástupurusha* with his separate genealogy.

Origin and mythical accounts of *Vástupurusha*.

*Varāha Mihira*¹:—"There was, it is affirmed, some Being obstructing with his bulk both worlds, but on a sudden he was subdued by the host of gods and hurled down. Of the several parts of his body, each is subjected to the particular deity by which it was attacked. It is this being of immortal substance that by the Creator was destined to be the dwelling-house personified (*alias* House-spirit)."²

*Matsya Purana*³:—" *Sinhikā*, the wife of *Kasyapa*, gave birth to two sons, *Rāhu* and *Vāstu*. The elder had his neck severed by *Hari*; the younger was cast down by the gods."

A fuller but partially different account is given in another part of the same work,⁴ to the effect that when *Siva* destroyed the demon *Andhaka*, the drops of perspiration which fell from *Shiva's* forehead on the ground gave birth to an immense and terrific being who greedily devoured all the blood of the demons killed in battle. Still insatiate, he practised austerities and obtained from the same deity as a boon the power to devour all the universe. Then the gods and the ante-gods all combined to bind him down, and each one entered into that part of that being's body which he attacked. Hence, being the *Vāstu*

¹ *Bṛihat Samhita*, Adhyaya 53, sl. 23, Bib. Ind., p. 257.

³ *J. R. A. S., N. S.*, Vol. VI, p. 280.

² Quoted in the *Vástuyāga-tatvam*, Raghunandana, p. 608.

⁴ Quoted in the *Sabdakaṭṭha-durma*, loc. ब्राह्म, p. 4255.

(dwelling) of all the gods, he is called *Vāstu*. Being thus overpowered he enquired how he should subsist, whereupon the gods allotted for him the *valis* offered within the *Vāstu* or dwelling by the householder, as also the offerings made in the *Vāstupasamana yajna*. This satisfied him, and from that time the *Vāstu yajna* has been ordained for the propitiation of the same.

The daily offerings to the *Vāstu* spirit are mentioned in the *Ashwalāyana Grihya Sutra*,¹ being a part of the *Bhuta Bali*, or the offering to all beings.

Modern *Vāstu-yāga*.
(a) Preliminary sacrifice to planets and ancestors.

30. The ceremony of *Vāstuyāga*, as performed in these days, opens with the performance of the *Grahayajna* or sacrifice offered to the planets, which, according to the *Matsya Purāna*,² is a necessary preliminary for the efficacy of all optional (*Kāmya*) religious rites. Another preliminary rite consists in the performance of the *Vridhhi Sraddha*,³ otherwise called the *Nāndimukha*,⁴ which has to be performed on every occasion of prosperity.

(b) Drawing the *Vastumandala*.

31. The specific ceremonies of the *Vāstuyāga*⁵ begin with dividing the ground-plan of the house into 81 squares by drawing ten lines from east to west and ten others from north to south.⁶ The lines are drawn with a piece of gold and then marked out with the assistance of strings smeared with different coloured powders.⁶ In some cases the number of squares is sixty-four, when the lines are nine and nine. These squares are collectively called the *Vāstumandala*. The large square is supposed to correspond to the body of the *Vāstunara* and its component

¹ *Grihya Sutra*, III, 1, 3; I, 2, 4; Bib. Ind., pp. 155-158.

² Quoted in the वास्तुयागसूत्रं, Raghunandana, p. 608.

³ Colebrooke's *Essays*, Vol. I, p. 187.

⁴ *Matsya Purāna*, quoted in श्रीचरित्रभक्तिविलास, pp. 699-701.

⁵ *Devi Purāna*, quoted in ditto, p. 609.

⁶ *Brihat Samhita*, Adhyaya 53, sl. 42-56; Bib. Ind., pp. 264-267. *J. R. A. S., N. S., Vol. VI, pp. 286-289.

squares taken to correspond to particular limbs and organs, and worship-
which again (in accordance with the myth already noticed) ping its deities
are conceived to be the seats of particular divinities, who on the squares,
are worshipped therein.

32. In the event of inability to prepare the *Vāstu-* or before
mandala, the worship of the presiding deities is recom- Śāligram in
mended to be performed before the sacred Śāligram stone default of
on the authority of the *Padma Purāna*,¹ which declares *Mandala*.
that the gods, *Asuras* and *Yakshas*, as well as the fourteen
worlds are all present at the place where Vishnu is present
in the form of that sacred stone.

33. The *homa*, which has to be performed next in this (c) *Homa*.
connection, is the connecting link between the rituals
of the Vedas and the Purānas.² The *Vishnu Dharm-*
*mottara*³ directs the *Vāstospati* mantras to be recited in
the sacrifice for the house-god. In all stages of the
ceremony, the oblation of milk, rice and sugar seems
to be very much favoured.

34. According to the *Devi Purāna*,⁴ the worship of (d) The augury
the *Vāstumandala* ought to be followed by the consecra- of floating
tion of a water-vessel in the middle of the *Vāstumandala* flowers.
sacred to Brahmā, and the water from the same has to be
poured on the ground following the lines which make up
the smaller squares. Finally a hole one cubit square and
four fingers deep is to be dug in the middle, properly
plastered with cow-dung and sandal paste. The wor-
shipper then meditates on Brahmā, and pouring out the
water from the sacred vessel into the excavation throws
white flowers and watches their motion. If they float
to the right the omen is prosperous, and the contrary is

¹ Quoted in वास्तुयामतत्तं
Raghuṇandana, p. 609.

² *Matsya Purāna*, quoted in
ditto, p. 611.

³ Quoted in ditto, p. 611.

⁴ Quoted in ditto, pp. 609-10 ;
also quoted in श्रीहरिमन्त्रिविचार,
pp. 706 — 708, as from the
Matsya Purāna. Cf. श्रीमत्सुखं,
Raghuṇandana, p. 291.

- bad. Afterwards the hole is to be filled up with sacred grains and with pure earth from the fields. On the conclusion of the ceremony the officiating priest is to be offered a present consisting of gold, a cow and a cloth.
- (e) Presents to the priest.
- (f) Ablution. The worshipper then goes through the usual ablution, which is enjoined after the performance of every sacrifice,—feasts Brahmins and celebrates the rejoicings with dance and song.
- (g) Feasting and rejoicing.

VI. Selection of material.

Special rules for selecting timber.

36. In primitive times the first habitations of man were made of plants and trees, and the rules in the *Grihya Sūtras* seem to be originally framed for structures of that description. Even in later times, when earth or stone came into use, wood and timber would continue to be employed. The *Shāstras*¹ contain elaborate rules as to the description of timber which should be used in the construction of human habitations. These prohibitions proceed upon two lines. The one relates to the accident or surroundings of the tree, and may be explained on grounds of humanity and utility. Thus trees, on which birds have nested, or growing in temples, on boundary cairns, at the confluence of two rivers, in burning grounds, near wells, or by the side of tanks, are prohibited to those desirous of prosperity; and so are trees burnt by fire, blown down by wind, broken by elephants, struck by lightning, half-dry, as well as those which have broken down after becoming dried. The second rule of prohibition depends upon the species of the tree, and might be the result of experience as to the usefulness or otherwise of particular trees in the construction of human habitations. Thus trees, exuding a milky juice, or abounding in thorns, are interdicted, as also the *Kadamba*, *Nim*, *Baherha*, *Lasorha* and *Ela* by name. On an auspicious day the consecrator proceeds to

¹ *Matsya Purāna*, quoted in the *Sabdakalpādurma*, p. 4261. *Bṛihat Samhita*, Adhyaya, 53, sl. 120; Bib. Ind., p. 278.

the forest to cut the timber. Having selected one of good quality, he offers oblations thereto for appeasing the spirits who might reside therein, and then the tree has to be so cut as to fall to the east or north. The presence of certain colours in the cut is declared to denote the presence of certain foreign substances within the wood, and to lead to its rejection.

37. The analogue of the ceremony of laying the foundation-stone of a building exists among the Hindus, and is known by the name of *Silā-nyāsa* or "stone-planting," the rudiments whereof may be traced, in the ritual of the *Grihya Sūtras*, to the four stones on which a water-pot is placed. When the dwelling consisted of a hut of wood, the strength of the same depended on the posts, and so the earlier ritual concerns itself with them. With the introduction of improved forms of architecture the stability of the dwelling came to be identified with the strength of the foundation, and so the latter became the subject of a religious ceremony.

VII. *Silānyāsa* or "laying the foundation-stone."

38. The substance so to be deposited in the foundation must be the same as that which is to be employed in the construction of the building. The *Matsya Purāna*¹ enumerates two, namely, stone and brick; and the *Haya-sirshu Pancharātra* adds a third, *kunkur*. I shall treat of the subject as in the case of a stone-building, it being understood that—*pari passu*—the same form is observed for other structures.

Substance to be laid.

39. In the *Matsya Purāna*² it is directed that the tiles should be square, smooth, and marked with various emblems of prosperity. The ceremony of *Silā-nyāsa* is alluded to in a text of *Devī Purāna*.³ The ritual is pre-

Its quality:

¹ Quoted in *श्रीहरिभक्तिविलास*, p. 709.

² Quoted in the *Kalpataru* and *सहस्रनामस्तोत्रं*, Raghunandana, p. 667.

³ Quoted in *श्रीहरिभक्तिविलास*, p. 708.

And the ceremony of laying it.

VIII. Rules of architecture. General rules of, as to direction of, doors.

Special rules for building temples.

Proportion of different parts.

scribed in the *Hayasirsha Pancharâtra*,¹ and includes an *adhivâsa* or preliminary purification of the tiles, their invocation representing particular spirits, with a view to the continued prosperity of the house, and their deposit in the foundations at the four corners of the proposed building.

40. The *Silpa Shâstras* and the *Puranas* contain numerous rules and directions for the construction of houses of various descriptions, but we are here concerned only with one of them, namely, the direction of the doors. The earliest rule on the subject seems to be contained in the *Gobhila Grihya Sutra*,² where a door facing east is recommended to the householder desirous of glory and strength ; one facing north to him who is desirous of having sons and cattle, and one facing the south for the person desirous of having all his wishes gratified. In the same treatise, doors, facing west, or not facing the courtyard, or facing another's door, or allowing the householder to be exposed to the view of outsiders, are deprecated. As the possession of cattle and children is no need of the deities, we might expect that in treating of divine dwellings, preference would be given to doors facing east and south. This is actually the case in the *Mânasâra*,³ as will be apparent from the following passage which is also useful as showing the special architectural rules laid down for the construction of temples :—

“Temples consist of the *garb'hagriha* (the womb of the house), the *anturâla* (the anti-temple), and the *ard'hamantapa* (the front portico). The diameter of the whole length of the building, including the walls, is to be divided into a four and-a-half or six parts ; and the *garb'hagriha* to take up two, two and-a-half or three ; the

¹ Quoted in श्रीहरिभक्तिविलास, pp. 709-710 ; also in the Commentary.

² IV, 7, 15-21.

³ Translated by Ramraz in his Essay, pp. 49-51.

anturāla, one and-a-half or two ; and the *ard'ha-mantapa*, one or one and-a-half. ¹

“Temples on a large scale have three or four successive porticos attached to them in the front, which are called *ard'ha-mantapa*, *mahā-mantapa*, *Sthāpana-mantapa*, *urītya-mantapa*, &c. *Ard'ha-mantapas* are sometimes made broader than the *garb'hagriha*, in which case the width of the former is either one and-a-half or twice that of the latter. In the event of the three compartments being of the same breadth, the length of the whole should be two and-a-half the breadth.

Plurality of porticos.

“The breadth of the *garb'hagriha* being divided into three, four, five, seven, nine, eleven, thirteen, or fifteen parts, let two, three, four, five, six, seven, or eight be allowed to the interior space, and the remainder take up the thickness of the walls on all sides.

Thickness of walls.

“The thickness of the wall being divided into twelve equal parts, let five or six be given to the door-frames or posts without, and seven or eight to the inside of the door. The door-frames or posts may be placed either in the middle or at the extremity of the point of the division before-mentioned.

Dimension of doors.

“The height of the pillars of the *vimāna* is to be divided into ten or eight equal parts ; and nine, eight, or seven of them are given to that of the doorway, the breadth of which is to be half its height.

Height of pillars.

“In temples and houses of Brahmins and others, two-leafed doors may be used. The doors are turned either by means of a perpendicular cylinder, one end of which

Construction of doors.

¹ “Sometimes a portico is made round the *garb'hagriha* and *anturāla* together, the whole being closed by walls on all the sides but the front, in which are the doors for entrance, approached by the front portico, which is

generally a peristyle, and it serves as the innermost court around which people perform their circumambulations ; I say the innermost court, because there are other courts around the whole temple.”

rests on the ground, or by hinges. The outside of the door frames are ornamented with foliages, &c., and on the architrave of the door, and on both sides of it, are carved the images of the gods and goddesses presiding over gates and doorways.

The water-spout.

“Let a water-spout be made over the base on the back wall of the *garb'hagriha*, on the left side of the idol, either towards the east or the north, according as the temple may face towards the south or the east. The thickness of the spout should be either eight, ten, twelve, fourteen, or sixteen *angulas*. Its length should be equal to the *ad'hsthána*, which length being divided into three equal parts, one is given to the projection below (*lambana*). The breadth of the bottom of the spout is to be divided into five parts, and three to be given to the breadth of the sloping extremity below. The whole spout being divided into five parts, three to be given to the *cugmala* (an ornament made in the form of a bird), one to the *padma* (lotus or *cima recta*), and one to the *vájina* or fillet. On the surface of the spout a cavity is to be made for discharging the water, from one to five *angulas* broad. The breadth of the cavity at the end should be three-fifths of that at the bottom. The spout may be made to spring from the head of a lion, &c., and the whole so devised as to project like a plantain flower.”

The common type of Bengal temples.

41. As pointed out, by Dr. Rajendralala Mitra,¹ in Bengal, the cubical body common to all orders of Indian temples, “is covered over by four curvilinear sloping roofs in exact imitation of thatch, and the point of junction at the centre surmounted by a miniature representation of the original construction. This structure has no distinct cornice, its place being supplied by the arched ends of the projecting roofs under which ornamentations are produced

¹ Antiquities of Orissa, Vol. I, p. 30.

with great care to represent the ends of the framework." The copying in stone and brick of the earlier structures of more perishable materials is an established fact in the history of architecture in all parts of the world, and Dr. Mitra is right in his conception that the typical Bengali temple is only a reproduction in brick and mortar of the thatched original. I wish only to add to his description that what he thinks to be an ornamental reduplication of the temple is more probably the blind reproduction of the skylight thatch which is put up in the better class of thatched houses.

This, however, though the common, is not the only type of temple prevalent in Bengal. Forms approaching nearer to the dicta of the *Silpa Shāstra* are to be occasionally found, and in some cases a temple of the pure Bengali Nāt mandir. type has affixed in front of it a *mandapa* or *nāt mandir*, as may be seen in the temple of Kalighat near Calcutta.

42. The consecration or *pratishthā* of the temple, after its construction is completed, forms the subject of separate provisions, although some of them merge on the one hand in the *Vāstuyāga* and others in the ceremonies attending the consecration of the deity to whom the temple is to be dedicated. For secular purposes, the consecration corresponds to the ceremony of *griha pravesha* or "house-entering." If the *Vāstuyāga* has been performed at the beginning of the house (*griharambha*),¹ it is not obligatory to repeat it at the time of the house-entrance (*griha pravesha*) ceremony. *Variha Mihira*² tersely describes the latter thus: "Amid the shouts of Brahmins the proprietor has to make his entrance into his newly-built house, it being strewed with great many flowers, adorned

Other types.

IX. Conclusion.

Consecration and *pravesha*.

¹ वास्तुयागनन्तं, Raghunandana, 53, sl. 125, Bib. Ind., p. 279; p. 612. J. R. A. S., N. S., Vol. VI.

² *Brihat Samhita*, Adhyaya, p. 300.

with archways, and decorated with water-pots filled, the gods being worshipped with incense, perfumes and oblations." The special rites to be observed in connection with the consecration of temples and the formal entrance of the god therein will be detailed in the subsequent lecture.

CHAPTER IV.

(Lectures IV and IX.)

ON THE CONSECRATION OF IMAGES.

IMAGES classified into (1) ESTABLISHED, and (2) SELF-REVEALED,²; the latter not necessarily of fraudulent origin, 3; Inferiority of artificial images, 4; *Pratishthā*,—the meaning and different derivations of the word, 5, 6; merits of consecrating images! considered separately from the merits of consecrating temples, 7; texts extolling consecration of images, 8—14.—IMAGES CLASSIFIED according to MODES and MATERIALS of construction, 15—20; worship of *paintings*, *Gossami* v. *Gossami*, 21; Images made of *clay*, 22—24; quality of clay to be used, 25; process of construction, 26, 27; the process in "*Durga Puja*," 28; quality of clay required for *lingams*, 29; Images of *wood*, 30; directions for cutting the timber, 31; the image of *Jagannath*, 32; Images of *stone*, 33; Images of *metals*,—gold, 34; silver, 35; baser metals, 36; Metals for *lingams*, 37; mercury, 38; *Gems* for images, 39; for *lingams*, 40; Images *encrusted* with stones, 41. *Animal products* used for making images, 42; Images and *lingams* made of *fragrant substances*, 43;—of *flowers*, 44; other materials for *lingams*, 45; Special efficacy of different materials, 46.—SIZE of images, 47; rule for images in separate temples, 48; rule for a *lingam* of clay or gem, 49.—SHAPE AND FIGURE of images, 50; rule for *lingams*, 51; DEFECT of construction in images and its consequences, 52—55; defects excusable in certain cases, 56; Consequences of defects in *lingams*, 57.—INSTALLATION: time and place, 58; persons competent to instal, 59; *Details of ceremonies*—(a) *Preparatory*: Erection of *Adhivasa Mandapa*, 60; of *Vedi*, 61; of *Snana Mandapa*, 62; and of a *Mandapa* for stores, 63; difference of opinion as to the requisite number of *Mandapas*, 64; proper time for erecting them, 65; (b) *Outside ceremonies*: Image purified on obtaining from artist, 66; carried to *Snana Mandap* in procession with dance,—preliminary ablution and invocation, 67; (c) *Ceremonies inside*, the *Snana Mandapa*, 68; the necessity of *Sankalpa*, 69; its formula, 70; Appointing the *Achārya* or priest, 71; his qualifications, 72; disqualifications, 73; the functions of *Dvārajāpakas*, *Murttidharas*, and *Murttipas*, 74—76; (d) *Intermediate ceremonies*, 77; worship of the nine *Grahas*, 78; (e) The beginning of the *Achārya's* functions, 79; the ceremony of ABLUTION as in *Bṛihat Samhita*, 80; as in *Bhaviṣya Purāna*, 81; (f) The ceremony of PRANA PRATISHTHA, or vivifying the image, 82; its

legal effect, 83; *the Dakor temple case*, 84; summary of judgment, 85; (g) The UTSARGA, or dedication of the temple to the idol, 86; (h) Concluding ceremonies of installation, 87.—DUTIES SUBSEQUENT TO CONSECRATION,—continuation of daily worship, and repurification in case of break in service, 88; in case of image being defiled, 89; Maintenance and preservation of pious works, 90; Worship of images enjoined as a daily duty, 91; The respect due to images, 92.—LEGAL EFFECT OF CONSECRATION: Inseparability of the deity and its consecrated image, *Durga Prosad Dass v. Sheo Prashad Pandah*, 93.

1. Having finished the subject of construction of temples, I propose now to deal with the topic of the consecration of images therein.

Classification
of Images:
Established
or self-re-
vealed.

2. The sacred writings of the Hindus notice two kinds of images,—one self-revealed and the other artificially created. Thus in the Padma Purana,¹ Siva declares to Parvati: "Hear, O goddess, I speak of that partial abode of Hari; it is celebrated of two kinds, the established and the self-revealed. The image of Hari prepared of stone, earth, wood, metal, or the like, and established according to the rites laid down in the Vedas, Smritis and Tantras is called the established. Now hear me speak of the self-revealed. Where the self-possessed Vishnu has placed himself on earth in stone or wood, for the benefit of mankind, that is styled the self-revealed." Vishnu in the above passage is typical of all deities. Even in our own days the miraculous discovery of divine images is not unknown to the faithful. For those disinclined to believe in such miracles, it is easy to explain that the image might be really an old one re-discovered by accident or a new one manipulated for a pious fraud. A common preliminary to such finds is a vision which appears in a dream to one of the devout worshippers, who communicates the same to his relations and neighbours, whereupon a procession is formed to the indicated spot, when lo and behold

¹ Uttara Khanda. Adhyaya, 73. Quoted in *Sabdakalpadruma*, p. 2536 loc. Pratimā.

the image is discovered to the delight of the faithful and to the advantage of the favoured dreamer who becomes the recognised custodian of the god and the medium of his worship. The sceptic will, no doubt, find in this a corroboration of his theory of fraud, and in many cases his surmise might be the correct one. It is not necessary, however, even for a purely rational explanation to impute fraud to the dreamer in every case. The causation of dreams is still so obscure that it is possible to imagine a man dreaming of the existence of an image or other thing after having come across it, or having himself deposited it in a fit of somnambulism; or the dream may be true like other recorded instances in the books which are explained either by way of accidental coincidence, or by some process of that transcendental psychic energy, the existence of which long known in the East is only now being acknowledged in the West, and forms the most prominent scientific problem of our times.

3. It is not necessary also to deny a natural origin in every case to one of these self-revealed deities. There is no end to the freaks of nature, and it is quite possible for wood or stone either in natural growth or by the application of other than human agency to assume fantastic shapes in which the devout might find some resemblance to their favourite divinity.

Self-revealed
images not
necessarily
fraudulent.

4. Coming now to the case of the artificial images (hereinafter called images) it is to be premised that the Hindu sages have always treated this form of worship as an inferior one,—fit only for those who are unable to grasp the abstract conception of the Supreme Being. This will appear clearly from the following texts :—

Inferiority of
artificial im-
ages.

“I am in the fire for those who sacrifice; in the heart of those who recite prayers; in images for those of small

understanding ; for those possessed of true knowledge I am everywhere.”¹

“God is in the fire for those who sacrifice ; in the heart of those who recite prayers ; in images for those of small understanding ; for those possessed of true knowledge Hari is everywhere.”²

“For the needs of the worshippers, forms are invented of the Supreme Being (Brahma) who is *Chinmaya*, without a second, indivisible and incorporeal.”³

Meaning and
derivation of
‘Pratishthā.’

5. The text of the *Padma Purana*, cited above, *ante*, p. 80, speaks of the installation of artificial images according to the rites laid down in the *Shastras*. The entire process is known amongst the Hindus by the name of *Deva-pratishthā* or the *pratishthā* of gods. The latter word is derived from the prefix *prati* and the root *sthā*, and means literally standing well or firmly. Its technical meaning is stated in the *Mahā Kapila Pancharātra*⁴ to denote the special presence of an all-pervading essence, in an image of earth, &c., by force of special hymns. The *Hayasirsha Pancharātra*⁵ gives another derivation. “The god Hari is the supreme soul, and his energy is called *Sri*. The goddess *Sri* is revealed as the *prakriti* and Keshava is the *purusha* ; the goddess does not remain without Vishnu, nor does Hari without the Lotus-born. The worshipped image is declared to be Krishna, and the pedestal the goddess residing in a lotus ; their union in due form is proclaimed to be the *pratishthā*.”

¹ Quoted in *Sabdakalpadruma*, p. 2538, loc. *Pratimā*, as from *Agni Purana*.

² Quoted in *Sabdakalpadruma*, p. 2538.

³ Quoted in *Deva Pratishthā Tatvām*, p. 644.

⁴ Quoted by Raghava Bhatta and Raghunandana :—*D. P. T.*, p. 646.

⁵ Quoted in *H. B. V.*, p. 631.

6. The *Bhāgavata Purana*¹ speaks of *pratishthā* as the means whereby the Universal Soul is localised and made to dwell at a particular place.

7. The religious merit to be acquired by the consecration of images has been already mentioned in the text of Yama, *ante*, p. 44, adduced in the previous lecture in connection with the merit accruing from the consecration of temples. In the ordinary case, the worshipper erects a temple and establishes a deity for worship therein, and hence there is nothing unusual in the merit of both actions being extolled together. Cases, however, may arise where a devout worshipper may consecrate a temple to an existing deity, or where he establishes an image without providing a temple for its home and habitation. Hence, we find some texts dealing separately with the religious merits of the two actions. Those relating to the erection of temples have been already cited. I give below some of those which extol the consecration of images.

Merit of consecration apart from building of temple.

8. According to the *Matsya Purana*,² the consecration of divine images is one of the forms of *Kriyā Yoga*, or the practical form of the Yoga philosophy, which consists of active devotion or the devotion by due performance of the every-day duties of life, as contrasted with the *Gnyana Yoga* or contemplative devotion. The practice of this virtue is rewarded with faith and salvation.

Texts.

9. To him who establishes an image of Vishnu and worships it the *Vishnu Dharma*³ promises the fulfilment of all wishes in this life and eternal beatitude in the mansions of Vishnu in the next.

10. In the *Vishnu Dharmottara*,⁴ which is a supplement to the preceding work, the devotee who causes to be prepared an image of Vishnu, is promised immunity from

¹ Quoted in *H. B. V.*, p. 631, *vide* Commentary.

² Quoted in *H. B. V.*, p. 631.

³ Quoted in *H. B. V.*, pp. 631-632.

⁴ Quoted in *H. B. V.*, p. 603.

A portion of the passage is quoted in *D. P. T.*, p. 646, as from Madhavallāsa.

misfortune whilst alive and transportation to the abode of Vishnu after death. The duration of his residence in those regions of bliss is defined to be one thousand years for each atom constituting the image which owes its existence to him; and the reward is multiplied according to the materials of which the image might be composed, in the same way as for temples,¹ with the exception of the case of bricks which, though used for temples, have been apparently never used for images.

11. *Narasinha Purana* :² "He who causes to be constructed an image of *Narasinha* with the proper *in-signia*, sojourns to the mansions of Vishnu freed from all sins. He who, without any desired object, duly consecrates an image of *Narasinha* is freed from corporeal bonds; and he who does the same moved by desire for any particular object is beatified in the mansions of *Narasinha*. He who having caused the construction of an image of *Janārdana*, has the same duly consecrated, never quits the mansions of Vishnu."

12. *Gautamiya Tantra* ³ promises to the establisher of an image of Vishnu, religious merit equal to that acquired by visiting innumerable holy places, muttering numberless prayers, performing countless sacrifices, travelling in holy forests or reciting all life the name of Hari.

• 13. It is declared in the *Bhavishya Purana*⁴ that he who consecrates the image of Vishnu is freed from all his sins; adorned with all ornaments accompanied by all his relations up to the twenty-first degree, and seated on a resplendent car, he is glorified in the *Vishnu-loka*, after receiving great honours in the mansions of Indra and the rest.

¹ The reference is to the text of the same work quoted in the third lecture, *ante*, p. 46.

² The whole text is quoted in the *Devi Pratishthā Tatvām*, p. 646. The first sloka is quoted in

H. B. V., pp. 603-604. The remaining slokas are quoted in the same work at pp. 632-633.

³ Quoted in *H. B. V.*, p. 633.

⁴ Ditto, p. 632.

14. The climax of hyperbole, however, is reached in the *Hayasirsha Pancharātra* and the *Skanda Purana*. The former¹ declares that, he who has established the god Vishnu, honoured by all the gods, has verily established the whole world, animate and inanimate ; that man transports himself with ten ascending and ten descending generations to the mansions of Vishnu ; his sins incurred in ten million births are burnt as by fire.

The latter² delivers itself in the following terms:—"The establisher of an image of Vishnu, is exalted in the mansions of Vishnu, for the same number of thousands of *yugas* (ages, or periods of four or twelve years) as the number of days for which he preserves the image in the world.

15. The *Gautamiya Tantra*³ classifies images into two kinds, the *lepya* and the *lekhyā*. The former ordinarily denotes moulded figures and may be made to include metallic figures cast in moulds. Similarly the latter usually signifies pictures, but may be made to include chiselled figures of wood and stone.

16. The *Matsya Purana*⁴ divides images into four classes, namely : (1) paintings, on canvas, walls, or vessels ; (2) moulded, of clay ; (3) melted, of metals ; and (4) chiselled, of wood or stone. Another passage of the same work⁵ recommends the construction of images of gold, silver, copper, iron, brass, bell-metal, jewels, stone, auspicious wood and conch-shells; whilst in a third, the phallic emblem of Siva is recommended to be made of jewels, crystal, clay, or auspicious wood as the worshipper might desire.

¹ Quoted in *H. B. V.*, p. 632.

² आत्मे। वाचदिनामि लोकेऽस्मिन्
स्नापयेन् प्रतिमां चरे।
नावयुगसहस्राणि विष्णुलोके महीषदे॥
Quoted in *H. B. V.*, p. 632.

³ लेप्या लेख्या द्विधा चैव प्रतिमा
परिकीर्तिता। Quoted in *H. B. V.*,
p. 610.

⁴ Quoted in *H. B. V.*, p. 624.

⁵ Quoted in *D. P. T.*, p. 644.

17. The *Padma Purana*¹ in the passage already referred to speaks of stone, earth, wood, and the metals as the most common substances employed in the construction of images.

Ordinary materials ;

18. The *Agni Purana*² speaks of images of Vishnu made of gold, silver, brass, stone and precious stones. The *Devi Purana*,³ after giving a long catalogue of the materials employed by different orders of beings (gods, spirits, &c.) for preparing the image of the *Devi*, enumerates gold, copper, clay, wood, stone and iron for images worshipped by ordinary mortals.

other ingredients.

19. A passage in the *Gautamiya Tantra*⁴ speaks of *Kasmira*, amongst others, as the material of which an image may be prepared. According to the lexicographers this means saffron, as well as the *Ficus elastica*.

Another classification.

20. The *Hayasirsha Pancharātra*⁵ enumerates seven classes of images, namely, those made of clay, wood, metals, precious stones, stones, sulphur (?) and flowers.

Picture-worship.

21. *Paintings* on canvas, walls and vessels have been mentioned in the texts of *Matsya Purana* already cited. In the *Varaha Purana*⁶ allusion is made to the worship of paintings (of Vishnu) on walls or canvas. There is no doubt that paintings of some sort on walls would come into existence before the acquisition of the art of painting on canvas. In the *Mahabharata*⁷ is described the worship of the image of the demoness *Jarā* under the name of *griha-devi*, house-goddess, painted on the walls of every residence. The *Hayasirsha Pancharātra*⁸ promises beatitude in the *Vishnuloka* for a thousand *yugas*

¹ *Ante*, p. 80.

² Quoted in *Sabda Kalpa Druma*, pp. 2538-2539, loc. प्रतिमा.

³ Quoted in *S. K. D.*, pp. 2537-2538, loc. Pratimā.

⁴ Quoted in *H. B. V.*, p. 610, and *D. P. T.*, p. 644.

⁵ Quoted in *H. B. V.*, p. 624.

⁶ Quoted in *D. P. T.*, p. 644.

⁷ *Sabhā Parva*, *Jarāsandhotpatyupākhyāna*. Adhy. 18, śls. 2-5. Roy's edition, p. 49.

⁸ Quoted in *H. B. V.*, p. 624.

for every picture of Vishnu caused to be finely painted by the worshipper. In our times paintings do not seem to be a very common emblem of worship. Pictures of the gods are put up in houses and chapels for decorative or commemorative purposes, and a large trade in such pictures exists in several religious centres. In the Dewali time, which corresponds in Upper India with a general cleansing and burnishing up of premises, shop-keepers have pictures painted on their doors and walls, or paper pictures pasted thereon. The paintings on the *cháls*¹ in Bengali images of Durgá are simply a back-ground for the main image of clay. Group pictures of Jagannath, made in Pooree of varying sizes, are carried far and wide by pilgrims and *pándás*. Those in miniature are often made into amulets and worn on the neck or arm. Those of larger sizes are some times mounted on frames and worshipped in domestic chapels. In the case of *Gossamee Sree Greedhareejee v. Ruman Lalljee Gossamee*² will be found an instance of an endowment of a public temple in which the object of worship was a picture of a high-priest of the Vallabhacharyas, who is looked upon as an incarnation of Krishna.

22. *Images of clay* are usually made for temporary purposes, the principal examples being the *pratimás* made in Bengal for the Durgá and other Pujas and the phallic symbols of clay made by worshippers all over India, all which are consigned to the waters after the worship is over. Clay images for temporary worship.

23. Figures of gods like Ganesa, Hanumána, and Garuda are placed on niches or brought out in relief in the plaster over the gateway of houses, as auspicious emblems. Baked and unbaked figures of various gods are sold as or decorative purposes ; not for regular worship.

¹ Ghosha's *Durgá Puja*, pp. 8-9.

² L. R., 16 I. A., 137; I. L. R., 17 Calc., 3.

toys on festivals, specially in the Dewali time ; at the latter ceremonies they occupy the background of worship.

Unburnt clay
only for regular
worship.

24. The images intended for regular worship are to be made of unburnt clay. This is inferrible from the text of the *Vishnu Dharmottara*, already cited,¹ which expressly excludes bricks while enumerating the rewards promised to those who construct images of different substances. The positive prohibition is to be found in the *Krityatattvārṇava*,² which says that one who worships the goddess Durgā in burnt clay is converted into ashes by the wrath of the goddess. Considering that such images are installed only for a temporary purpose and afterwards consigned to destruction, the prohibition of the use of burnt clay is easily explainable by a desire to secure the early dissolution of the image and its consequent insurance against desecration by being put to base uses or disrespectful treatment.

Quality of
clay.

25. The clay is to be gathered from the banks of rivers or from other auspicious places ; different colors being recommended for the different *varnas* (castes), namely, white for the Brahmin, red for the Kshatriya, yellow for the Vaisya, and black for the Sudra.³ According to the *Hayasirsha Pancharātra*,⁴ the clay should be kneaded after being mixed with various astringent decoctions and milky juices derived from diverse plants, as well with various bovine products, and then let lie for a month.

Substratum
of straw.

26. The *Matsya Sūkta Tantra* prohibits a householder from constructing for worship an image purely of clay, but recommends an inner substratum of straw.⁵ There is

¹ *Ante*, pp. 83-84.

² Referred to in Ghosha's *Durgā Puja*, p. 7.

³ *Hayasirsha Pancharātra*, quoted in *H. B. V.*, p. 616 ; also

Ghosha's *Durgā Puja*, p. 7.

⁴ Quoted in *H. B. V.*, p. 616.

⁵ Quoted in *Prāna-Toshini*, p. 294. Cf. Ghosha's *Durgā Puja*, p. 2.

no doubt much to be said in favor of this process, which greatly facilitates the drying of the image and effects a considerable reduction in its weight and fragility. The *Hayasirsha Pancharātra*¹ directs a stake made of *khadira* or other sacrificial wood to be placed upon the bottom-plank, which in later developments does the duty of the Jewel-throne. The straw is to be worked round this stake and the clay comes in as the uppermost layer.

27. The following account of the processes for making the images of Durgā and her accompanying deities is taken from Babu Pratāpa Chandra Ghosha's treatise,² and *mutatis mutandis* the same process is followed for the construction of other images similarly intended for temporary worship :—

The process of construction, as in "Durgā Puja" :—

28. "On the day of Ratha Yatra, *i.e.*, on the second day of the bright half of the month of Ashadha, a piece of bamboo-slit of the required length is properly cleaned and smoothed and rounded by the kumbhakara (potter), and then taken up to the room where the family idols are kept ; the family priest, after worshipping Vishnu, anoints it with chandan, a sandal wood paste, and invokes Durgā upon it. This piece of bamboo-slit remains in the same room till on the 8th day of the waning moon of Sravana, *i.e.*, till the Janmashtami, when the architect of the pratimā brings it down. The frame-work (*katāmo*) is then commenced. The materials are scrupulously collected, and every precaution is taken to preserve their purity (*i.e.*, freedom from defilement by unbelievers). The materials are pieces of bamboo-slits, unpeeled garan (Ceriops Roxburghianus, Arn) yearlings, dried ulu grass (Imperata Cylindrica, Beauve) and a plank from mango timber. The carpenter then drills holes in the plank at an auspicious moment, and the kumar builds the frame-

Commencement.

The frame-work.

¹ Quoted in *H. B. V.*, p. 616.

² *Durgā Puja*, pp. 2-4.

The use of
straw.

Moulding of
figures.

Plastering and
finishing.

Painting.

Decoration.

work upon it. Rough skeletons of the idols are made with ulu straw and then a dough of earth from the Hugli, cowdung, and husk of rice is made up, and with the earth thus prepared the kumar moulds up the figures. These are seven in number, four of which are removable, and the principal three which are central in the group, are attached to one another. All the figures, except one of the lowermost figures of the central group and the rightmost one, are first made headless. The heads are prepared by the kumar at his house. The figures are then allowed to dry for about a fortnight or twenty days, when again an auspicious moment is fixed upon for covering over the idols with a plaster of finer earth, and it is then that the heads to those figures, which had not been fixed unto them, and the fingers of all the figures, are put on. The snake which encircles one of the central figures is at this time formed, so also the top piece or *chal* as it is called. The small nooks on both sides of the frame-work are next fitted up with two groups of figures and miniature weapons, and the head of a buffalo and a mouse are then moulded. Indeed, before the waning fortnight of Asvina, the kumar finishes his work, and then the figures are left to dry for some days. The painter enters appearance generally on the third or the fourth day of the waning fortnight of Asvina, and paints figures according to the directions given in the *Shastras*. On the fourth or rather the third day of the waxing fortnight of Asvina, *i.e.*, about three or four days before the Puja, the *Mali*¹ decorates the idols with tinsel and imitation orna-

¹ "Formerly the *malis* (men of the gardener caste) used to decorate the idols. But nowadays the ornamentation of the idols is very expensive and forms a lucrative trade by itself; and those who follow it

are called *Sajwallas* (ornament makers), or *Dakwallas* (dealers in tin)." The hair of the idols is made of blackened jute. (See p. VIII of Appendix to Ghosha's *Durgā Puja*, note (2).)

ments. The idols are ready for worship on the evening of the sixth day of the waxing fortnight of Asvina.

"On the plank of wood is raised about a foot high a ^{Other details.} platform of wicker-work covered with plaster of earth. On this platform rest all the figures, their real weight being supported by horizontal props attached to the strong frame-work of bamboo-slits and garan, which is shaded from the front view partly by the figures themselves and partly by a plaster of earth. Supported on the frame-work of the back is the richly-moulded *chal*, divided into three semi-circular compartments with the convex side projecting upwards. In each compartment are painted, according to the injunction of the *Shastras*, figures of various gods and goddesses, and scenes of several battle-fields. From the two uppermost corners of the frame-work project two figures of Nilakantha bird, *Coraccias Indicas*. At places where the ulu straw is not available, the substratum of the figures is made with the straw of paddy. In some families, however, the same frame-work is used every year; and when the plank gets rotten, a bit from the old plank is attached to the new."

29. For the phallic emblem of clay, the same recom- ^{Clay for lin-} mendation as to four colors is made in the *Lingārchana* ^{gams.} *Tantra*.¹ The image in this case is made of pure clay, from day to day.

30. *Wooden images* of gods though made as toys or ^{Wood for} carved over panels and lintels are not in our days very ^{images.} commonly the objects of established worship. The *Matsya Purana*² in passages already cited directs the use of *Subha dāru*, auspicious wood, in the preparation of images or *lingams*. In the absence of any express directions, I take it that the auspiciousness would depend upon the

¹ Quoted in *Prāna-Toshini*, p. 367. चतुर्धा पाथिबं लिङ्गं ।

² *Ante*, p. 85.

same rules as those previously described¹ for timber in connection with the construction of temples.

Rules for cutting timber.

31. In the *Brihat Samhita*,² directions are given to regulate the cutting of timber for the purpose of preparing wooden images, which are similar to those given in the *Matsya Purana* in the case of cutting timber for dwellings whether of gods or of men, the ceremony being called by the same name *Vana Pravesa* (entering the forest). The selection of an auspicious day, the offering of *valis* to the presiding divinities or spirits, the selection of particular sorts and species of trees, and the avoidance of others, the desirability of the tree falling towards the east or north when cut down, as well as the omens indicated by the colors at the incision are common to both ceremonies.

Special rules for images.

A special rule in connection with timber being cut for the construction of images is thus laid down by *Varāha Mihira*³:—"Mark the quarters on the tree, as well as its upper and lower end, since a phallus or an idol ought to be thus placed that its sides are turned to the same direction." The *Hayasirsha Pancharātra* treats at some length of the ceremony of forest entrance mainly in connection with the acquisition of stones for the construction of images, but it is incidentally mentioned therein that the rules are the same, *mutatis mutandis*, for stone and timber, and the rules so given include those given above on the authority of the *Matsya Purana* and the *Brihat Samhita*.

The image of Jagannath.

32. The temple of Jagannath in Pooree affords an instance of the worship of wooden images. The principal images in this shrine, namely, Jagannath, Balabhadra, and

¹ Lecture III, p. 72.

² Adhyaya, 59. ih. Ind., pp. 323-325. Cf. Adhy. 53, sls. 120, 123.

³ *Brihat Samhita*, Adh. 59, sl.

7. Bib. Ind., p. 324. Journal of the Royal Asiatic Society, *New Series*, Vol. VI., p. 331.

Subhadra, are made of wood. In fact, the supreme divinity is styled *daru brahma*, or the wooden manifestation *par excellence* of the Supreme Deity.¹ According to the legends in the Puranas, the three original images were fashioned by a divine artist out of a trunk that came miraculously floating from the sea and was stranded near the temple for the express purpose. In modern times the images are renewed every twelve years, the wood used being that of the *Nim* tree. The tradition amongst the faithful is that the log destined for the purpose still appears punctually as a sea-drift and is taken charge of by the priests, they being the only privileged spectators of the recurring miracle.

33. *Stone images* are one of the most common types ^{Images of stone.} now prevalent in this country. In public worship, stone is almost the sole substance now employed for the construction of *lingams*. Stone images of gods and goddesses are also very commonly used in public as well as private chapels. Kulluka, in commenting on a passage in *Manu*,² where mention is made of idols, explains the word to mean idols made of *stone*, &c. There is no doubt that in point of durability the material compares favourably with those which we have been hitherto considering in detail. The *Hayasirsha Pancharâtra*³ dilates upon the ceremonies to be observed in ^{Ceremonies for collecting the stone.} gathering the stone which has afterwards to be fashioned into the image or emblem of a god. The rules laid down possess a very close resemblance to those already described for wood. The further special directions worth noting ^{Directions as to quality.} are these :—Stones attacked with saline or acid efflorescence, thrown up on the banks of rivers, situate in barren

¹ Hunter's Orissa, Vol. I, pp. 92-93. *Brahma Vairavata Purana*, quoted in *S. K. D.*, p. 1257, loc.

² *Samhita*, IV, 130.

³ Quoted in *H. B. V.*, pp. 624-628.

soil or in ant-hills, warmed by solar rays, or burnt by forest fires are to be avoided. Those which are smooth, of uniform colour, underground, untouched by solar rays, immersed in water are approved. Stones are also classified as infant, young, adult and old,¹ according to the increasing scale of their hardness. The very soft and the very hard are not to be used, but the two medium classes are recommended. The stone so selected is to be brought and placed in the working-shed which is to be erected to the north of the temple,² where again the stone is to be worshipped before being taken in hand by the sculptors.

Of metals.

34. *Metallic images*, in the usual course of human progress, must belong to a stage subsequent to that in which images were first made of earth or stone, although a knowledge of the metals must afterwards have immensely facilitated the fashioning powers of man over stone. Of the pure metals we find gold mentioned in the *Ashwalāyana Grihya Parisishatha*,³ and in the passages of the *Matsya Purana*, *Agni Purana* and *Devi Purana*, already cited, *ante*, pp. 85—86. They are also alluded to in the *Mahabharata*,⁴ where a lady's resplendent beauty furnishes the groundwork for the simile, "like an image of gold."

Gold.

Silver.

35. Silver is also mentioned in the same treatises except the last, about which I am not positive. There is a natural desire in wealthy endowers to utilise the precious metals for the images endowed by them. Their very value, however, has made them objects of cupidity. Foreign invaders like Mahmud of Ghazni made them a regular article of booty, and even petty thieves, now and then, are smitten with such devotion to such divinities as to desire uninterrupted communion.

¹ Cf. *सुवैद्य* in *Agni Purana*, quoted in *S. K. D.*, p. 2538.

² *Hayasirsha Pancharatra*, quoted in *H. B. V.*, pp. 604-5, 626.

³ IV, 3, *Bib. Ind.*, p. 335.

⁴ *Adi P.* 173, 27. *Roy's edn.*, p. 452.

36. The baser metals are therefore now more common-^{Baser metals.}ly employed to furnish material for worship. The increasing poverty of the country may also furnish a partial explanation for the same fact. Of these copper¹ and its alloys, brass² and bell-metal,³ are the most frequently mentioned. Iron⁴ also is mentioned, but not so frequently.

37. For the construction of *lingams* various treatises^{Other metals mentioned.} mention the additional names of the following metals, namely, tin,⁵ lead,⁶ and mercury.⁷ Of metallic compounds, orpiment⁸ is mentioned, and of alloys one made of three metals (gold, silver, and copper),⁹ and another of eight metals (gold, silver, copper, tin, lead, brass, iron, and steel).¹⁰ Salt, which chemically speaking is a metallic compound, may as well be mentioned here. It is another of the substances mentioned in the *Shastras*¹¹ as material for the making of *lingams*.

38. It might at first sight appear impossible to Mercury. construct any fixed object from such a liquid as mercury.

¹ *Ashvalayana Grihya Parisi-
shā*, IV, 3. Bib. Ind., p. 335. —
Matsya Purana, in *D. P. T.*, p.
644.

² *Devi Purana*, &c., &c., in
S. K. D., p. 2538.

³ *Hayasirsha Pancharātra*
quoted in *H. B. V.*, p. 624.

⁴ *Gautamiya Tantra*, in *D. P.
T.*, p. 644.

⁵ *राजमायु प्रवर्धनं*। *मत्स्यसूक्त*
quoted in *P. T.*, p. 364.

प्रजावृद्धिकरं राजं। *लघ्वरसमुच्चय*
quoted in *P. T.*, p. 365.

चपुशीमायसं लिङ्गं। *कालोत्तर*
quoted in *P. T.*, p. 305.

⁶ As above. *लघ्वरसमुच्चय*
quoted in *P. T.*, p. 365.

⁷ *पारदस्य महाभूत्ये*। *पद्मपुराण*
quoted in *P. T.*, p. 364, quoted in
P. T., p. 366. *पारदे वाच महाया*।
शिवधर्म।

⁸ *Garuda Purana*, quoted in
P. T., p. 365.

⁹ *त्रिलोहसम्भवं* लिङ्गं। *लघ्वर-
समुच्चय* quoted in *P. T.*, p. 366.

¹⁰ *मिश्रजं सव्येतिदिहं*। *कालोत्तर*
quoted in *P. T.*, p. 365. *चटलोह-
मयं* लिङ्गं। *लघ्वरसमुच्चय* quoted
in *P. T.*, p. 365.

¹¹ *सोभाग्याय च सावर्णं*। *लघ्वर-
समुच्चय* quoted in *P. T.* p. 364.
वज्रे लघ्वरजं लिङ्गं। *नरकपुराण*
quoted in *P. T.*, p. 365. *लघ्वरेण
च सोभाग्यं*, ditto, ditto.

The books, however, prescribe certain incantations assisted by levigation with certain vegetable juice for solidifying that ordinarily liquid substance.¹

Of gems, for
images in
general.

39. Gems or precious stones have been collectively indicated under the name of *ratna* in some of the texts already cited. From the very nature of things, the images wholly composed of such materials must be of small dimensions in a general and comparative sense. For the same reason, there is no minimum laid down for gem *lingams*, although with other materials they are directed to be made not smaller than the thumb.² Crystal and coral images might reach comparatively large sizes, but in the case of the gems properly so-called the margin of size must always be very small. Pearls, sapphires and crystal are mentioned amongst the materials for *pratimas* in the *Grihya Parisishta* of *Aswalāyana*.³

For *lingams*.

Efficacy of
different gems.

40. The list as regards *lingams* is very much larger, and includes, besides the above, the sun-stone, the moon-stone, the load-stone, diamond, emerald, lapis lazuli, and talc and seven other kinds of minerals, "bright as lightning and self-illuminating at night." Each of them is efficacious for special purposes. The pearl gives fortune, the moon-stone conquers death, the sun-stone gives power, the lapis lazuli deprives enemies of their power, diamonds, crystals, and emeralds fulfil every kind of desire, and so on.⁴

¹ माहकाभेदतन्त्र quoted in *P. T.*, pp. 368-369.

² कुम्भार्तिज्ञाने कृते न कदा-
चिदपि क्वचित्।
रत्नादिभिर्निर्माणे मानसिद्धावशा-
द्भवेत्। quoted in *P. T.*, p. 367.

³ IV, 3. Bib Ind., p. 335.

⁴ Quotations in *P. T.*, pp. 364-366:—

पद्मपुराणं—

* * * सोभाग्याय च मोक्षिकं।

चन्द्रकान्तं सत्यजित् स्नात् * * *

वीरमिषोदय-धृत-कव्योत्तरेऽपि—

चन्द्रकाशः कृता ह्यष्टौ मन्त्रो विष्णु-

दुष्कलाः।

रात्रौ प्रकाशकाः सर्वविघ्नोपाशान-

कारिणः॥

41. Images encrusted with stones might also by stretch of language be taken to be included within this class. Images encrusted with gems. The most famous instance of such ornamentation is connected with the *Kohinoor* diamond which, according to tradition, was once so attached to the forehead of the 'Lord of the World' at Pooree, and was stolen therefrom.

42. The text of the *Matsya Purana* already quoted Of conch-shell speaks of images of conch-shell. The word in the original may also mean horn or the frontal bone, specially of an elephant. The conch-shell is a particularly sacred substance with the Hindus. The *Matsya Sukt*¹ interdicts the worship of *lingams* made of *sankha* in the present Kali-yuga. Prohibited in Kali-yuga. Of horns. Some horns, e.g., those of the rhinoceros, are held in great esteem for religious purposes. Bones, however, are generally considered unclean, although much used in mystic rites and incantations. The *Garuda Purana*² mentions *lingams* of hair and bone. Of hair and bone. In this connection, I may observe that *lingams* made of other animal products are also mentioned in the *Shastras*. As might be expected, the products of the sacred animal—the cow,—are in the forefront. Of other animal products. Milk, curds, butter, *ghee*, and even the bovine excrement are declared in the same work³ to afford the raw material for *lingams* intended for worship. In the last

नामावर्षात् विज्ञेया रसैर्गन्धैश्च	मातृकाभेदतन्त्रे द्वादशपटले—
रूपतः	स्नादिके सर्वेसिद्धिः स्नातया मरकते
वस्त्राद्याः स्नादिकाद्याश्च * * * *	प्रिये ।
सर्वेकामप्रदं पुंसां लिङ्गं * * * * ॥	¹ तथाच मत्स्यसूत्रे ।
नवकुपुराणे— * * * *	ताम्रलिङ्गं कलौ नाशेत् वै तस्य मीश-
क्षयस्थानं चतुर्धा तु ज्ञेयं सामान्य	कस्य च ।
सिद्धिषु ।	रत्नचन्दनलिङ्गञ्च मङ्गलास्त्रायसन्तथा ॥
सारसङ्गुहे विद्येयः—	quoted in P. T., p. 365.
* * * * * तेजसं सूर्यकान्तजं ।	² केशास्त्रिसर्पार्थं लिङ्गं सर्वेश्वर-
* * * * * वैदूर्यं मयदर्पणवत्	विनाशनं ।
	quoted in P. T., p. 365.

case, the excrement is directed to be caught in the air before it reaches the ground. The *Shiva Dharma*¹ and the *Kālotara*¹ also dwell upon the efficacy of *gomaya lingams*, and in the latter work¹ *lingams* of *gorochanā* (a substance found in the head of the cow) find a place.

Fragrant substances for lingams.

43. I have already cited the passage from the *Hayasirsha Pancharātra* which mentions images made of fragrant substances (*gandha*). In the *Garuda Purana*² and *Lakshana Samuchchaya*,³ similarly, *lingams* made of *gandha* are enumerated amongst others. Of individual fragrant substances, so to be utilised, the former speaks of camphor,⁴ and the latter of musk, saffron, white *aguru* and black *aguru*.⁵ Saffron is also mentioned in the *Gautamiya Tantra*.⁶ Red-sandal (*rakta chandana*) is mentioned in the *Matsya Sukta*,⁷ but it does not clearly appear whether the wood or its paste is intended to be denoted. Apart from these individually fragrant articles, the *Garuda Purana*⁸ furnishes a recipe for preparing the *gandha lingam* or fragrant phallus *par excellence*, by an admixture, in certain proportions, of most of the substances already enumerated.

Flowers for images and lingams.

44. This leads us by a natural transition to flowers, which are mentioned as one of the materials for images in the *Hayasirsha Pancharātra*. They are also mentioned

¹ Quoted in *P. T.*, p. 366.

² गन्धोत्थं गुणदं भूरि । quoted in *P. T.*, p. 365.

³ गन्धं सोमाग्न्यदं लिङ्गं । quoted in *P. T.*, p. 364.

⁴ कपूरं सक्कवं लिङ्गं । quoted in *P. T.*, p. 365.

⁵ लवणं समुच्चयेऽपि— * * * * कक्षूरी सक्कवं लिङ्गं धनाकाङ्क्षी प्रयजेत् ।

* * * * *

कान्तिकामसु सततं लिङ्गं कुङ्कुमं सक्कवं ।
चेतागुहसमुद्भूतं महाविविधवर्णेन ।
भारवाभक्तिदं लिङ्गं कम्पाजसु-
क्कवं ।

quoted in *P. T.*, p. 366.

⁶ Quoted in *D. P. T.*, p. 644.

⁷ Quoted in *P. T.*, p. 365.

⁸ Quoted in *P. T.*, p. 364.

in the *Lakshana Samuchchaya*.¹ The *gandha-pushpa-maya lingam* which occurs in the *Kālottara*² may mean either a *lingam* made of fragrant flowers or one made of fragrant substances and flowers.

45. Even this does not exhaust the substances detailed in the books as possible materials for fashioning the *lingam* for worship. Various texts³ include boiled rice, treacle, sugar, sugar-candy, sesamum paste, paddy husks, bamboo-shoot, paddy, fruits, *durva* grass, sand and ashes, within the above category. Other vegetable products,

46. Each description of material as illustrated in the case of different gems has allotted to it a special efficacy mostly for the benefit of the worshipper. It would be useless for our present purposes to describe the whole in detail, but the following from *Vardha Mihira*⁴ may serve as a sample for the rest. "An image being of wood or clay, promises long life, fortune, strength and victory; one of precious stone, tends to the weal of the people at large; a golden one yields prosperity; one of silver bestows renown; one of copper, increase of progeny. A statue or phallus of stone insures a great acquirement of ground. (The use of copper and several other materials is prohibited in Kali-yuga by a passage in the *Matsya Sukta*.⁵) Efficacy of different materials.

Those curious to pursue the subject are referred to the texts collected in the *Hari Bhakti Vilāsa* and the *Prāna-toshini*.

47. The size of images seems to depend upon two con- siderations : firstly, as to their location in a domestic chapel or in a separate temple mostly intended for public worship ; Size.

¹ बौद्ध बुद्धिप्रदायक । quoted in P. T. p., 364.

² *Bṛhat Samhita*, Adhy. LX, svs. 4-5. J. R. A. S., New Series, Vol. VI, p. 333.

³ Quoted in P. T., p. 366.

⁴ नाचद्विह्वलौ नाचद्व * * *

⁵ Quoted in P. T., pp. 364-366.

&c. See P. T., p. 365,

and secondly, upon the materials employed for the construction. The *Matsya Purana* ¹ lays down the limit of length for a domestic image to be from one thumb-knot to one span, larger sizes being allowed in detached temples. Raghunandana ² alludes to a text which permits an increase in the size of the domestic image in case of stone. For images of *Vishnu*, the *Gautamiya Tantra* lays down three classifications of size, the good being fifteen *angulis* high, the medium twelve, and the inferior eight *angulis*. Apparently, these limits are intended for non-domestic images, but the point is not absolutely clear. Earthen images, generally, have a larger standard of size allowed to them,³ and as we have seen before they are mostly intended for domestic worship, although in some cases they are worshipped in a public hall separate from any particular human habitation. In connection with the clay images of Durga, &c., Babu Pratāpa Chandra Ghosa ⁴ remarks as follows :—

as of Durgā.

“The size of the pratimā varies greatly in different families. Some have the plank about $4\frac{1}{2}$ cubits long, and the figures are accordingly about 4 cubits high. Such enormously large and unwieldy pratimās are rare. In the *Shastras*, however, there is no direction given as to the size of the pratimā, except when it is made of precious metals or crystals, though it is expressly stated that the pratimā should be so made as to excite veneration and love. Miniature pratimās may be here and there seen,

चक्रं पर्वदारभ्य विसर्जितं
यावदेव ।
इदं वै प्रतिमा काव्ये नाधिका शक्यते
बुधैः ॥

Quoted in *H. B. V.*, p. 604; also quoted in *D. P. T.*, p. 644, with the comment इदं चक्रं इदं चक्रं, प्रसादे
अधिका शक्तिं वचनात् ।

² तनाधिकपि शैलजा इह
शुभदा तन्नाकरेयता । *D. P. T.*,
p. 644.

³ Quoted in *H. B. V.*, p. 610.

⁴ इयं शैलजा पञ्चरात्र quoted in
H. B. V., pp. 616—623.

⁵ *Durga Puja*, Appendix, p. i.

but they are not general. The usual size of the pratimā is with plank about $3\frac{1}{4}$ cubits long and $1\frac{1}{2}$ cubits broad; these dimensions are observed every year in the construction of the same." I wish, however, to add that the *Matsya Sukta*¹ does contain a rule about the size of pratimās of Durga, namely, that a householder should not prepare an image of three cubits and-a-half, but one of three cubits or less. A limit.

48. The rule about the size of images installed in separate temples is thus laid down in the *Matsya Purana*:² Rules for images for temples.
 "Images for temples should be made from one to sixteen (cubits) in height. According to his wealth the worshipper should make it medium, large or small (in size)." A rather different rule is given by *Varāha Mihira*:³ "A statue one cubit high is beneficial; one that measures two cubits in altitude brings wealth; an image of three cubits promotes peace; and one of four, abundance."

49. The size of a clay phallus ought, according to the *Vishvasāra Tantra*,⁴ to correspond to the thumb-joint of the worshipper. This is rather inconsistent with the Tantric text already quoted,⁵ which makes the size of the thumb the minimum for such purposes. The same text makes an exception in favour of gem *lingams* which may be smaller still. In the case of stone, the size may vary Clay lingams. Gem lingams.

¹ Quoted in *P. T.*, pp. 294-295.

न मदी दक्षयौ कुर्यात् वेतालमयीं
 क्वचित् ।
 निहन्ता दक्षगर्भाच्च विष्वद्यमो सम-
 र्धयेत् ॥"

² Quoted in *H. B. V.*, p. 604.

³ *Bṛihat Samhita*, Adhy. 58, sl. 49. Bib. Ind., p. 321.

Dr. Kern in *J. R. A. S.*, *N. S.*, Vol. VI, p. 328, is mistaken in supposing this and succeeding rules to

be confined to the image of the Sun treated of in the preceding sloka.

⁴ षट्कर्मादीपिकादृत विश्वसार-
 तन्त्रेऽपि ।

स्वादह पर्वमानकं छाया लिङ्गं प्रपू-
 जयेत् ।

खदादि लिङ्गघटने प्रमाणं परिकी-
 र्तिताम् ॥

P. T., p. 367.

⁵ *Ante*, p. 19.

from that of the thumb to the most gigantic proportions, and the larger the better, for the merit increases with the size. ¹

Shape and figure.

50. The shape and figure of images forms the subject of minute regulations in the literature of Hindu art and religion. Very full descriptions are given not only of the shape and colour which the image of a particular deity should assume, but also of its surroundings, like arms, ornaments, dress, vehicles, attendants and the like. The proportions of size are also fully prescribed. Those desirous of pursuing the subject may find the authorities collected in the *Hari Bhakti Vilasa* and its commentary. The 58th chapter of the *Brihat Samhita* ² is also a good compendium on the subject.

Form of *lingams*.

51. The rules for the construction of the *lingam* are less numerous. *Brihat Samhita* : ³ “(For the construction of an emblem of Siva), set out in the length the (measure of the) circumference of the round part, and divide the whole phallus into three portions, of which the part at the bottom must be quadrangular, that in the midst octangular, and the rest round.

“Sink the quadrangular portion into a pit in the earth, and put the middle member into the cavity of the pedestal. The pedestal is visible upwards to its cavity, in all directions, over an extent equal to its height.”

Defects :

52. The greatest care has to be taken in the manufacture of the images intended for worship. Whilst on the

¹ माहकाभेदनम् ।

शिलादो च महेमानि चूलच फल-
दायकं ।

चतुर्दशान्दे शि यद्वा हेमाद्रि मानकं ।
क्रमेण देवदेवेशि फलं वरुविधं
सुमेतु ॥

P. T., p. 367.

² Bib. Ind., pp. 312-322.
J. R. A. S., N. S., Vol. VI, pp.
322-330.

³ Adhy. 58, sls. 53-54. Bib. Ind.,
pp. 321-322. J. R. A. S., N. S.,
Vol. VI, p. 329. Cf. texts quoted in
P. T., p. 367.

one hand, according to one authority, ¹ an image possessing the required characteristics bestows prosperity by its very presence, and, according to another, ² the author of an image of Vishnu, possessing the proper characteristics, is beatified for sixty thousand years, dire consequences are to be apprehended from the existence of any flaw or defect in the image intended for dedication. *Purānoddhāra* : ³ “(The Gods) do not accept (the offerings of) food of the man who worships a divine image defective in characteristics ; therefore it should be avoided.”

53. According to the *Gautamiya Tantra*, ⁴ when a man through ignorance or folly sets up an image wanting in due proportions, he acquires no religious merit by its worship. Wherever stands such an image, there is oppression by the King, and the householder is doomed to hell.

54. *Vardha Mihira* : ⁵ An image with excessive limbs bodes peril from the monarch ; one with undersized limbs, infirmity to the maker ; one with a thin belly, danger of famine ; one that is lean, loss of wealth. When it shews a wound, you may predict the maker's death by the sword. By being bent to the left, it destroys his wife ; by being bent to the right, his own life. It causes blindness by having its eyes turned upwards, and care, by the eyes being downcast.

¹ Varaha Mihira, *Brihat Samhita*, Adhy. 58, sl. 29. J. R. A. S., Vol. VI, New Series, p. 326.

² *Agni Purana*, quoted in S. K. D., loc. Pratimā, p. 2538. Cf. text of *Narasinha Purana* प्रतिमा लक्षणेति quoted, ante, p. 84 ; also *Matsya Purana*, quoted in H. B. V., p. 624. समुदायवा या व चायुक्तोपद्रा सदा ।

³ नीमकादोक्तपराशोभारे ।

सुराणां लक्षणेति यत् पूजये नर ।

तस्मान्न नाभिष्टवन्ति तस्मान्ना परि-
वर्जयेत् ॥

H. B. V., p. 624.

⁴ Quoted in H. B. V., p. 610.

⁵ *Brihat Samhita*, Adhy. 58, sls. 49-52 ; J. R. A. S., Vol. VI, New Series, p. 328. Also quoted in H. B. V., p. 624.

The same.

55. The same ideas are more fully developed in the *Matsya Purana* :—¹

“The image of the God should never be made deficient or having an excess of limbs. An image with a hideous face causes the death of the owner. A corpulent image destroys the artist, and an emaciated one destroys wealth. One thin in the middle causes famine, and one without flesh causes loss of wealth. One with a crooked nose causes sorrow, and one with a compact body causes fear. A flat-nosed one causes trouble and affliction, and one with no eyes destroys the eyes. One with a defective face and one with sparing hands and feet cause grief. One deficient in limbs and one with short thighs cause errors and madness in men. One with a wry face or one without a waist destroys the King. If the image be without hands or feet, then a great plague is caused ; and one without knees or thighs causes the good of the enemy. One without breast destroys children and friends.”

Defects where
excusable.

56. An exception is made in the *Gautamiya Tantra* ² in favour of an image placed upon the top of a mountain, on the bank of a river, at the junction of four roads, in a grazing ground, on the sea-shore, or within a forest. A defect of proportion in such a case is not attended with evil consequences.

Defects in
lingams.

57. As might be expected, similar consequences are threatened against the raising of *lingams* defective in proportion, &c. The negative loss is declared in the *Vishvasāra Tantra* ³ to the effect that the worship of such

¹ Quoted in *H. B. V.*, pp. 623-624.

समुद्रकुलेऽथवा वा मागदीना न
दुषयी ।

² पर्वताग्रे मदीतीरे चले
गोष्ठभूमिष ।

Quoted in *H. B. V.*, p. 610.

³ षट्कर्मदीपिकाद्वय विप्रसारद्वय
Quoted in *P. T.*, p. 397.

emblems is entirely infructuous. The positive dangers are thus portrayed by *Varāha Mihira* :—¹

“A phallus being excessively lean and long, destroys the country; one which has lost its side, tends to the ruin of the town; one damaged at the top is pernicious.”

58. The image or emblem being thus prepared according to rule, the next step to be undertaken is its installation. Confining ourselves for the present to the fixed images, that is those intended to be permanent fixtures at the place of installation, we find the directions as to time and place to be much the same as those already mentioned for the construction or consecration of temples.

Installation of fixed images.

Time and place.

59. As to the parties competent to celebrate the installation, the *Devi Purana* ² directs that the gods should be installed with reference to the *varnas* and *āśramas*, that is to say, with due regard to the caste or order of the worshipper. Certain divinities are supposed to be particularly attached to individual castes. Thus, according to one text, ³ *Sambhu* is the god of the Brahmins, *Mādhava* of the Kshattriyas, *Brahmā* of the Vaisyas, and *Ganesha* of the Sudras. In practice, however, these distinctions are not much prevalent, and it is left to individual faith to instal any particular deity. Broadly speaking, at the present day, *Vishnu*, *Siva* and *Sakti*, under various names or shapes, divide the homage of the world of Hindu faith. The *Devi Purana* ⁴ licenses all the four

Who can instal?

Gods of the four sects.

Gods worshipped by all.

¹ *Bṛihat Samhita*, Adhy. 58, sl. 55; Bib. Ind., p. 322; J. R. A. S., N. S., Vol. VI., p. 329.

² *वैष्णवविभागेन देवाः स्थाप्या हि नान्यथा ।*

Quoted in *H. B. V.*, p. 635.

³ *विप्राणां देवतां शङ्काः क्षत्रिय-
राजाणां साधवः ।*

*वैष्णवाणां तु भवेद् ब्रह्मा शङ्कायां गण-
नायकः ॥*

Manu quoted in Wilson's Works, Vol. I, p. 2.

⁴ *चातुर्वर्ण्यस्य विष्णुः प्रतिष्ठाप्यः
सुखादिभिः ॥*

Quoted in *H. B. V.*, p. 635.

castes to worship *Vishnu*. Similarly, the *Lingārchana Tantra* ¹ enjoins the worship of the emblem of *Siva* upon all the four castes, threatening extreme penalties for non-compliance.

Preliminary :
Adhivasa and
Adhivasa-mandapa.

60. The preliminary purification of the image is termed *adhivāsa*, and a separate structure styled the *adhivāsa-mandapa* has to be erected. *Varāha Mihira* ² prescribes its location to the north or east of the temple or house in which the deity is finally to repose ; the *mandapa* or shed is to be provided with four archways, covered with sprouts from auspicious trees, and adorned with wreaths and streamers of various colours. The *Matsya Purana* ³ contains the same directions as to location as given above, but the *Bhaviṣya Purana*, ⁴ the *Hayasirsha Pancharātra* ⁵ and the *Pratishthā Mayukha* enjoin the erection to be placed in front of the temple. There is really very little conflict between the two precepts, it being remembered that usually a temple faces north or east, and that the same rule is applicable to ordinary houses. As to the archways, the authorities above cited (with the exception of the first) recommend branches of the *plaksha* (*Ficus infectoria*) for the east, the *udumbara* (*Ficus glomerata*) for the south, the *ashwattha* (*Ficus religiosa*) for the west, and the *vata* (*Ficus indica*) for the north. These

Trees used for
the archways.

¹ ब्रह्मविद्ब्रह्मविदो देवि यदि
क्षिप्तं न पूजयेत् ।

मन्त्रपाद परमेष्ठानि ययश्चासना-
मिधः ॥

शुद्धश्च परमेष्ठानि सदा शुद्धश्च भवेत् ॥

Quoted in *P. T.*, p. 371.

² *Bṛhat Samhita*, Adhy. 60, svs. 1-3; Bib. Ind., pp. 325-326; J. R. A. S., N. S., Vol. VI., pp. 332-333.

³ प्रासादस्तोत्रे नापि पूर्वं वा
मन्त्रो भवेत् ।

Quoted in *H. B. V.*, p. 638.

⁴ प्रासादाद्भानिदुरे तु कुव्यात्
मन्त्रमपगतः ।

Quoted in *H. B. V.*, p. 638.

⁵ प्रासादस्त्रायनी मुदा । (याममन्त्रपा)

Quoted in *H. B. V.*, p. 638.

provisions seem to be related to those in *Vastu Vidya*,¹ which pronounce these trees to be of evil omen if situated to certain directions of the residence, and of good omen if to the contrary. The reason for the selection of these trees can be traced back to the *Grihya Sutrās* :—

Gobhila :² “The *ashvattha* is presided over by Aditya, the *plaksha* by Yama, the *nyagrodha* is (sacred) to Varuna, and the *udumbara* to Prajapati.”

The *mandapa* is to be covered in all directions with green boughs,³ and ornamented with flower wreaths,⁴ streamers, looking-glasses, bells, *chowries*, &c., and an awning spread under the roof. Sand from the Ganges river is to be strewn, and the *panchagavya* sprinkled on the outside.⁵

61. A *vedi* or altar is to be erected in the middle of the *mandapa*, and four *kundas* excavated in the direction of the four cardinal points of the compass from the *vedi*.⁶

62. North of the *adhivāsa-māṇḍapa* is to be erected the *snāna-mandapa* or hall of ablution, square in shape and provided with four doors, and provided with means

¹ See *Bṛihat Samhita*, Adhy. 53, sl. 85; Bib. Ind., p. 272; J. R. A. S., N. S., Vol. VI., pp. 293-294; also the text :—

भवनस्य वटः पूर्वे जातः स्यात् सर्व-
कामिकः ।

उदुम्बरस्य चाम्बे वावरे पिप्पलः
शुभः ।

वज्रशीतलतो धन्वो विपरीतो विप-
र्यये ॥

Quoted in Commentary to *Gobhila Sutra*; Bib. Ind., p. 715; *Gobhila Grihya Sutra*, IV, 7, 22; Bib. Ind., p. 713.

² *Grihya Sutra*, IV, 7, 24; Bib. Ind., p. 713.

³ मखर्पं मखवेदाङ्गे शाखाभिस्तु
समन्ततः । हयग्रीवं पञ्चरात्रं quoted
in H. B. V., p. 638.

⁴ Says *Vardha Mihira*: “For the east side of the shed are prescribed variegated wreaths and streamers; for the south-east side red ones; for the south and south-west black ones. They must be white in the west, pale-yellow in the north-west, variegated in the north side, and yellow in the north-east.”—*Bṛihat Samhita*, Adh. 60, sls. 2-3; J. R. A. S., Vol. VI, *New Series*, pp. 332-333.

⁵ जाह्नवी-वास्तुकां शुभां ।
वास्तुदेशेन विकिरेत् पञ्चमयेन प्रोच-
येत् ॥

⁶ H. B. V., p. 639.

for the egress of water.¹ The dimensions of the latter structure are to be half, one-third or one-fourth of the former. A platform of bricks is to be erected therein, or the entire floor may be sprinkled with sand.

• Store mandapa.

63. A third *mandapa* has to be erected for the storage of the numerous articles required for the performance of these ceremonies.

Conflict of authorities as to number of mandapas.

64. *Varāha Mihira*² in the text already quoted seems to contemplate the erection of only one *mandapa*, namely, that for the *adhivāsa*, but the other authorities, as we have seen, prescribe three. The omission in *Varāha Mihira* might be due to the concise nature of his compilation, or to a stage in the development of the ritual when one erection did duty for all three. In the *Ashvalāyana Grihya Parisishta*³ only the first two are mentioned,—the first simply as the *mandapa*, and the second as the *deva-snāna-mandapa*. Further, by express mention, the former accommodates the ingredients for the *homa*, and the latter the ingredients for the ablution. It seems to me that there must have been three successive stages in the evolution of the ritual marked by the gradual addition to the number of the *mandapas*.

Its probable cause.

Time for erecting mandapas.

65. As to the *time* for the construction of these *mandapas*, the *Ashvalāyana Grihya Parisishta*⁴ contemplates their erection on the very day of the ceremony of installation of the image. With greater elaboration of the ritual, this came to be too short a time for all the necessary preparations, and so we find the *Pratishthā Mayukha*⁵ declaring that these might be erected seven, five, or two days, or immediately before the commencement of the installation ceremony.

¹ *H. B. V.*, p. 640.

² *Ante*, p. 106.

³ *Bib. Ind.*, pp. 336-337.

⁴ *Bib. Ind.*, p. 336.

⁵ Leaf 1, p. 2.

66. The image up to this time has remained in the hands of the artist, who generally belongs to a low scale in the Hindu gradation of castes. The rise of ideas as to the sanctity of all forms of life led to the conception of a necessity for some purification for the certain, probable or even possible, killing of life which might have attended the operations for the construction of the image from their beginning to termination.

Outside ceremonies ; purification on delivery by artist.

67. In the *Grihya Parisishta*¹ the image is simply directed to be brought (apparently from the artist's place) to the hall of ablution, care being taken that during the progress the temple remains to the right of the carrier. The *Bhavishtya Purana*² contains only a direction for the formation of a procession of priests, &c., whilst conveying the image from its place of manufacture to the hall of ablution. The *Hayasirsha Pancharâtra*³ contains the latest development of the ritual ; namely, the formation of a procession with dance and music, and a preliminary ceremonial ablution of the image with twenty jars of water, either in the artist's place before starting the procession or at its close outside the precincts of the hall of ablution. The following invocation⁴ is addressed to the

Procession to temple.

¹ Bib. Ind., p. 337.

² Quoted in *H. B. V.*, pp 644-645.

³ शिल्पिशालां ततो गत्वा जीत-
वाद्यादिभिः स्नानैः ॥

स्नानयेद्गवम्भूतिं सह पिष्टिकया
ततः ॥

अथ विंशतिकुम्भाभिः स्नानमष्टपतो
वह्निः ।

स्नापयित्वा परीक्षेत त्रीभूतिं तां विच-
क्षणः ॥

अथवा शिल्पिशालायां स्नापयित्वा
यथाविधि ।

प्रवेशयेत् पिष्टिकायां तां विप्रैः स्नान-
मष्टपतं ॥

Quoted in *H. B. V.*, p. 644 ; also
compare quotation at p. 645.

⁴ नमस्ते च सुरेशाणि प्रणीवे
विद्यकर्मणा ।

प्रभावितशेषजगदादि तुभ्यं नमो
नमः ॥

त्वयि सम्पूजयामीशं नारायणमनामयं ।
रक्षिता शिल्पिदीपैस्त्वष्ट्रद्विभुक्ता सदा

भव ॥
Quoted in *H. B. V.*, p. 645 ; also
quoted by Raghunandana in *D. P. T.*, p. 646, in connection with
the next ablution.

Preliminary
ablution and
invocation.

image at the end of this preliminary ablution, prior to its entry into the hall of ablution :—

“O Queen of the gods, wrought by *Visvakarmá*, hail to thee ! Salutations to thee, the preserver of thy own-created countless worlds ! In thee we worship the god *Náráyana*, who is free from disease ! Mayst thou, being cured of all the faults of the artist, ever remain in perfect (or prosperous) condition.”

The artist is rewarded with suitable presents when the image is removed from his custody. ¹

Ceremonies
inside the
*snána-manda-
pa* : laying the
idol.

68. The first step in the ceremonies inside the *snána-mandapa* is thus concisely described by *Varáha Mihira* ² :—
“After smearing (with cow-dung) a plot of ground within the shed, and strewing it with sand, and then with sacrificial grass, lay the head of the image on a throne and the feet on a pillow.”

Sankalpa :

In the *Grihya Parisishta* ³ of *Ashwaláyana*, it is directed that after the image has been placed in a reclining position on a bed spread over the altar, the worshipper should bathe, perform the *pránáyama* and the three-fold *nyása*, as a prelude to making the *sankalpa* or solemn vow to perform a religious rite.

its efficacy ;

69. This solemn resolution is a necessary preliminary to the performance of every religious ceremony. According to the *Bhaviṣhya Purana*, ⁴ “whatever men perform without a *sankalpa*, the meritorious effect of the act is diminished, and a moiety of it is destroyed altogether.”

its formula.

70. The formula for the *sankalpa* on the occasion of a *pratishthá* or installation of an image is thus given in the

¹ *H.B. V.*, p. 645.

² *Bṛhat Samhita*, Adh. 60, sl. 7. Cf. *J. R. A. S., N. S.*, Vol. VI, p. 333. Dr. Kern's rendering, “lay the head, pillow, and feet

of the statue on a throne” is a mistranslation.

³ IV, 4 Bib. Ind., p. 337.

⁴ Ghosh's *Durgá Puja*, p. xxiii.

Pratishthá Mayukha:¹ "On this day (here follow full chronological details), I (so and so), being desirous of obtaining (as the case might be) longevity, prosperity, all progeny, eternal bliss or the love of God, for causing the presence of the divine emanation in this image or *lingam*, shall perform the *pratishthá* of the image or *lingam* of such and such divinity."

71. After performing the *sankalpa*, the worshipper should, according to the *Grihya Parisishta*² request the door-incanters, sacrificial priest and the *Acharya* to begin their respective functions. Appointment of priest.

72. The qualifications of the *Acharya* or superior priest are laid down with minuteness in the *Devi Purana*, the *Matsya Purana*³ and the *Hayasirsha Pancharatra*.⁴ His qualifications. As might be expected great stress is laid upon his possessing full knowledge of sacred literature, specially of the *Pancharatra* and the *Vastuvidyá*; and also upon his being a devout and devoted worshipper of the divinity whose image is to be installed. He may be either a householder or religious student, of good character, engaging countenance, young in years and born in a country where the black-deer roams in a state of nature.⁵ A Brahmin can officiate as *Acharya* for all the four castes; a Kshatriya, for Vaisyas and Sudras; a Vaisya for Sudras, but a Sudra for none.⁶

73. The disqualifications⁶ laid down for *Acharyas* are very much akin to those prescribed by Manu⁷ for Brahmins to be invited at funeral feasts. Disqualifications.

¹ Leaf 1, p. 2.

² Aswalayana, IV, 4; Bib. Ind., p. 337.

³ Quoted in *H. B. V.*, pp. 635-636.

⁴ Cf. Manu, II, 23.

⁵ *Hayasirsha Pancharatra*, quoted in *H. B. V.*, p. 635; also in *D. P. T.*, p. 645.

⁶ *H. B. V.*, pp. 635-636.

⁷ Adh. III, sls. 150-166.

Jápakas.

74. In the religious literature of the Hindus, *Japa* means the inaudible muttering of prayers for incantations addressed to any deity. The *Dvára-jápakas* mentioned in the *Grihya Parisishta*¹ denote priests who mutter prayers at the door of the structure where the image may be placed for the time. In the *Hayasirsha Pancharáttra*² provision is made for the appointment of five *Jápakas*, four for the doors, evidently of the *Mandapa*, and one for the *Garbha*, or inner chapel, where the image is finally to be installed.

Image-bearer.

75. In the same passage there is mention of the appointment of a *Murti-dhara* or image-bearer.

Image-keepers.

76. The *Matsya Purana*³ speaks of the appointment of 32, 16 or 8 *Murttipas* or image-keepers, possessed of the same qualifications as the *Acharya* in the *Pratishthá Mayukha*,⁴ eight or four *Dwarapálas* or gate-keepers are recommended to be appointed.

Intermediate ceremonies.

77. Between the *sankalpa* and the appointment of the priests, &c., which follow each other in the *Grihya Parisishta*, the *Pratishthá Mayukha*⁵ interpose the ceremonies of (1) the worship of Ganapati, (2) *Punyáha Váchana*, (3) the worship of the *Mátrikás*, and (4) the *Vriddhi Srádha*. The *Hayasirsha Pancharáttra* has directions to the same effect except that the worship of the presiding deities of the *tithi* and *nakshatra* is added in the beginning, and that the *Punyáha Váchana* is postponed till after the appointment of the priests.

Worship of the nine planets.

78. According to Raghunandana, the *Navagraha-puja*, or the worship of the nine planets, should be performed at the very beginning on the authority of the text of *Matsya*

¹ *Ante*, p. 33.

Quoted in *H. B. V.*, p. 637.

² Quoted in *H. B. V.*, p. 635.

⁴ Leaf 2, page 1.

⁵ *Pratishthá Mayukha*, leaf 1, p. 2; leaf 2, page 1.

Purana,¹ which declares that this should be done at the outset as a necessary preliminary to the fruitfulness of all *Kāmya* works.

79. The *Achārya* so appointed, is directed in the *Grihya* Beginning of priest's functions *Sutra Parisishta* to proceed to the *Yāga-bhumi* (the place for the sacrifice), the *Prāsāda* (temple) and the *Snānshālā* (ablution-hall), and sprinkle the same with water from the tips of *kusa* grass pronouncing the text *Apohishtā*, &c., and also to strew white mustard seed about. This is followed by the ablution ceremonies of the image.

80. According to the *Hayasirsha Pancharātra*,² the Ablution ceremonies: as in Hayasirsha; image should first be washed with cow-dung, cow-dung ashes and earth from an ant-hill, in order to remove the impurity created by the touch of the artist.

Varāha Mihira in his *Brihat Samhita* in the chapter on setting up seven statues, after directing the erection of the *mandapas*, and the adornment of its archways with green bows and streamers as mentioned above (*ante*, p. 106), and after directing the image to be placed in a reclining position in the *Snānashālā* (as quoted in § 68, p. 110) proceeds further to direct that:—

“Let the image, with the head to the east, be bathed as in Brihat Samhita; with an infusion of wavy-leaved fig, Pipal, glomerous fig, Siris and banyan, mixed with all sorts of auspiciously named plants, with sacrificial and other grass, with clay dug up by elephants and bulls from mountains, ant-hills, confluences, river-banks, and lotus-grown lakes joined to water from holy bathing places and the fine products of cows, the whole combined with scents and water containing gold and jewels. Let the bathing be performed amid the

कर्मदो ह नवग्रहपूजासाधनं चन्द्रमा चरुं पुंसां न काम्यं जायते
नवग्रहपूजासाधनं । कर्मदो ह नवग्रहपूजासाधनं ।

नवग्रहपूजासाधनं कर्मदो ह नवग्रहपूजासाधनं । D. P. T., p. 645.

² Quoted in S. K. D., loc. *Pratishthā*, p. 2543.

sounds of various musical instruments, solemn shouts, and the recital of the holy texts.

“Eminent Brahmins have to mutter prayers addressed to Indra in the east ; prayers to Agni in the south-east ; for doing which they ought to be honourably rewarded.”

“Let the special priest make an offering also to fire, with prayers addressed to the god whose idol is being consecrated.”¹

as in *Bhavi-
shya Purāna* ;

81. The same ceremony of bathing is thus described in the *Bhavishya Purāna* :—² The god should be first bathed with the five descriptions of water, the five *amritas*, with the five products of the cow, with the five earths, with sesamum oil, other unguents and astringents, with the infusion of the five flowers or the three leaves. Details are then given of the technical meaning of most of the above, which need not detain us here, and the passage concludes thus :—“Then the *Prāna Pratishthā* and the *homa* should be performed according to rule, and the priest’s fee duly paid for the completion of the ceremony.”

vivification
and homa to
follow.

Vivification
ceremony.

82. It will be observed that *Varāha Mihira* is silent on the ceremony of the *Prāna Pratishthā* or vivification which, according to the *Bhavishya Purāna*, comes in between the bathing of the image and the performance of the *homa*. According to the *Tantras*, the incantation consists of certain mystic syllables followed by an invocation, asking for the vivification of particular organs of the image with the vital energies of the divinity whom the image represents, and the continuance of such energies for all time.³ According to the *Vasishtha Samhita*⁴ the incantation is to be performed by the worshipper touching

¹ J. R. A. S., Vol. VI, N. S., p. 333, sls. 8, 9, 10, 11 and 12.

² S. K. D., loc. *Pratishthā*, pp. 2544-2545.

³ *Saradd Kramadipikā (tilak)*, S. K. D., loc. *Pratishthā*, pp. 2542-2543.

⁴ *Saradd Kramadipikā (tilak)*, S. K. D., loc. *Pratishthā*, p. 2543.

the heart of the image, the heart being supposed to be the essential seat of life. The *Káliká Purána*,¹ however, requires the cheeks of the image to be touched before touching the heart.

To return to *Varáha Mihira*,² we find him directing Setting up the image. that "when the image has been bathed, clad in a new garment, smartly adorned and honored with flowers and perfumes, let the person, whose function it is to set it up, put it on a nicely-spread bed.

"After the sleeping image has been consecrated with wakes, dancing, and song, they have to proceed to its setting up, at a period indicated by the astrologers.

"Let the image, worshipped with flowers and unguents, amid the sounds of horns and musical instruments, be led, with all precaution, round the shrine, in such a manner that the latter is always kept in the right side.

"Thereupon, make a copious oblation to treat Brahmins and fashionable people; and, after a piece of gold has been deposited in the cavity of a seat, let the image be placed upon the base.

"By particularly honouring the setter-up, astrologer, Brahmins, fashionable people, and carpenter, one shall inherit good things in this world, and heaven in the next."

"The priests of Vishnú are generally styled Bhagavatas; Practice of those of the Sun, Magi; of Siva, Ash-smearers; priests of different sects, those of the Divine Mothers, are termed Adepts in the rites of the Mother's circle; those of Brahman, priests; the followers of the all-benevolent Saint (*i.e.*, the Buddha) are known as Cakyas; those of the Jinas, as Naked Monks. These different priests have to perform, agreeably to the rule peculiar to each sect, the ceremony in order of the god of whom they are the devotees."

¹ *Saradā Kramadīpikā (tilak)*,
S. K. D., loc. *Pratishthā*, p. 2543.

² *Bṛihat Samhitā*. Adhy. 60,
śls. 14-19. J. R. A. S., Vol. VI,
N. S., p. 334.

Legal effects of
Prdna Pratish-
thā.

Deity as a
legal entity.

The Dákor
Temple case.

Statement of
facts.

83. By this process of vivification the image from its previous status as an inanimate object, a simple piece of clay stone or metal, acquires the status of a judicial personage, capable of holding property. As observed by Mr. Justice Scott in his judgment in the Mandvi Temple case, *Thackersey Dewraj v. Hurbhum Nursey* (I. L. R., 8 Bom., p. 456), "the deity of the temple is considered in Hindu Law as sacred entity or ideal personality possessing proprietary rights."

84. It follows from this conception that a consecrated image cannot be the property of any particular person. The Dákor Temple case, *Manohar Ganesh Tambekar v. Lakshmiram Gobindram* (I. L. R., 12 Bom., p. 247) arose in connection with a temple situated at Dákor, dedicated to the god Shri Ranchod Ráiji. It was proved in the case that the deity in question was held in great veneration by the followers of the Vaishnava religion throughout Western India, and that the offerings made by the votaries at this shrine amounted each year to about a lakh of rupees in value. The existence of the deity could be traced back up to seven centuries, and the piety of reigning chiefs had from time to time added lands and villages to the property of the endowment. The throne of the deity had been lately covered with gold and silver by His Highness the Gaekwar at a cost of Rs. 1,25,000, and the present temple had been built by the ancestor of one of the plaintiffs at a cost of Rs. 1,00,000. The suit was instituted by the hereditary manager of the temple, descendant of the builder of the present temple, and by four other plaintiffs who were *gors* or priests residing in the same locality, whose duty it was to conduct the pilgrims, who were their *Yajmáns*, or patrons, to the shrine, and perform the worship of the deity on their behalf. "The defendants were a numerous body (about one hundred and

fifty in number) of *sevaks*, or ministers of the idol, succeeding to their offices by hereditary descent; they remained in constant attendance on the idol, performed the daily services, and kept in their custody all the cash, ornaments, clothes and other offerings dedicated to the deity. They were paid Rs. 150 a year out of the revenues of the foundation." From 1772, *i.e.*, the time of the erection of the present temple, the management of the temple and its appendant villages had been carried on by the *Tambekar* family, and at the same time the *sevaks* had given an agreement in writing to the manager of the institution, by which the *sevaks* bound themselves to observe certain rules in the performance of the daily services at the temple and for the preservation of the offerings made to the idol.

"The plaintiff alleged that the defendants had frequently ^{Plaint.} acted in contravention of the rules laid down in the aforesaid document, that they had latterly set up a proprietary title to the offerings made at the shrine, that they had appropriated part of those offerings to their own use, and that they refused to render an account of the property held by them in trust for the idol.

"The plaintiffs, therefore, prayed as follows :—

"1. That an account might be taken, by and under the directions of the Court, of all sums of money, ornaments, cattle and all other moveable and immoveable property which had come into the hands of the defendants as trustees of the idol.

"2. That the defendants might be ordered to pay into Court whatever, on taking accounts, might be found due by them to the funds of the temple.

"3. That, if necessary, the defendants might be removed from their office of *sevaks*, or worshippers and new *sevaks*, or worshippers be appointed in their stead.

"4. That a scheme might be settled by, and under the directions of, the Court for the management of the temple and of the funds thereof.

"5. That an injunction might be issued restraining the defendants from removing, alienating, or otherwise disposing of the cash, clothes, ornaments and other moveable as well as immoveable property dedicated to Shri Ranchhod Ráiji.

"6. That a receiver might be appointed to take charge of the said property of the idol.

"7. That all books, papers, and documents relating to the said offerings and to the disposal thereof might be directed to be forthwith brought into the custody of the Court."

Written statement.

In their written statement the *sevaks* contended amongst other things that they "were not the servants of the temple but *owners of the idol* and its property; that as owners and proprietors they and their predecessors had carried on the management of the temple uninterruptedly for more than seven hundred years; that they had never rendered any account of their management to the plaintiff Manohar or his ancestors or to any other person; that the agreement of A.D. 1772 was not a genuine document, and even if its genuineness were established it was not binding on them; that they had appropriated to their use such offerings as it had been their practice to appropriate for hundreds of years past; that they were not trustees of the *devasthán*; that they had not abused any trust and were not liable to be removed from their office and position as *sevaks*; and that the plaintiffs had no right to demand an account of their management."

Appeal to High Court.

The suit having been dismissed in the first Court on a preliminary point as to the right of the plaintiffs to institute the suit, without adjudicating upon the pleas of the

sevaks defendants upon the merits, the case was carried by the plaintiffs in appeal to the Bombay High Court. That Court having decided the preliminary point in favor of the plaintiffs' right to bring that suit, was required to discuss the defence of the *sevaks* on the merits, and gave Judgment. the following judgment thereupon :—

“The defendants take the position that they, as a body, *Sevaks claim to be owners and not trustees.* are the owners, for all secular purposes, of the idol, whom, in spiritual sense, they serve. The offerings made at the shrine, the cattle, and even the land presented by devotees are, they assert, their property free from any secular obligation, as none has ever in practice or in the intention of the donors been annexed to the gifts by which religious merit was sought and gained. They hold the property thus acquired, and have for centuries held it, as a sort of sacred guild, with hereditary succession to the several members. It is not held on any trust for the support of ceremonies or with any obligation annexed to it that can be enforced in a secular Court. *They deny jurisdiction of Civil Court.* The duty of providing a regular worship for the deity is of a purely moral kind, which they discharge merely to satisfy their consciences, one the nature and limits of which have never been settled otherwise than by their own will and judgment.”

After showing that the plaintiffs, though not trustees, *Locus standi of plaintiffs.* had yet an undeniable *locus standi* as relators, and the suit, if maintainable, might proceed at their instance, the judgment proceeds thus :—

“There is no difficulty in conceiving the existence of a *A society for its own benefit possible,* society having property and receiving gifts from its own members or from strangers, which it then disposes of simply for its own benefit or at its own discretion. The guilds and companies in manufacturing and trading cities held, and still hold, estates without the attendant obligations of a charitable trust. The property is their own,

but under English Law, corporation necessary for vesting of property.

It may be constituted under Act VI of 1882, otherwise intervention of a juridical person necessary.

Questions for decision.

distributable amongst members or at the pleasure of the governing body of the society, not held for the benefit of any class outside the society, or for the promotion of any purpose of recognised public utility. The latter characteristic is essential to a public charity, but in its absence there may be a corporation existing by royal grant, prescription or legal allowance, holding property for other than charitable purposes. Whether the association exists for charitable purposes or not, it cannot, according to English law, without incorporation in some shape, become vested with property as a mere fluctuating and undefined aggregate.—*Goodman v. Mayor of Saltash*.¹ If its purposes are such as are contemplated by section 26 of the Indian Joint Stock Companies' Act, VI of 1882, the society may get itself constituted accordingly under the Act. Otherwise, though the individual members may have certain rights and privileges as members of a class or answering to a certain designation, these advantages must be realized, as against the world at large, through the proprietary or quasi-proprietary right of some other person or corporation.

“The defendants in the present case put themselves forward, not merely as entitled to the enjoyment of particular benefits to be taken by them individually as members of a class, but as a body of proprietors holding a small estate, in the shape of immoveable property, but a much larger one in the form of the accumulated offerings of articles of value laid at the feet of the idol and of the revenue arising from this source. The questions are whether they can and do take this property and this revenue absolutely as their own without any trust or annexed duty, and whether, if they enjoy by a kind of agency or representation of the idol conceived as a personality, they fulfil the duty they owe to this ideal person in merely revelling on the grow-

¹ L. R., 7 A. P. Cas., 633, at p. 648.

ing revenues, or are bound to widen the range of the deity's beneficence in proportion to the expansion of his mundane means.

"As to the jurisdiction of the Civil Courts in matters of this kind, it is too late now to raise any contention. Under the native system of government, though it was looked on as a heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses (W. & B., H. L., 202,817), yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments. It was quite in accordance with the legal consciousness of the people that the Bombay Regulation XVII of 1827 gave to the Collector a visitatorial power enabling him to enforce an honest and proper administration of religious endowments. The connection of the Government in its executive capacity with Hindu and Mahomedan foundations was brought to an end for Bombay by Bombay Act VII of 1863 and for Bengal and Madras by Act XX of 1863. But the existence of sacred property and of the rights and obligations connected with it as objects of the jurisdiction of the Civil Courts is recognised by the laws just referred to. In the southern part of the Bombay Presidency, dedicated estates are expressly made inalienable by Bombay Act II of 1863, section 8. Questions arising under these laws between individuals with reference to proprietary and pecuniary rights and as to alleged misappropriations and defalcations must necessarily be dealt with by the Civil Courts, which only can bring the requisite sanctions to bear on the enforcement of an honest discharge of their duty by the holders of dedicated estates. The mere incidental cognisance of a religious or caste question, the recognition of the settlement of such a question by the competent authority, is

Jurisdiction undeniable, and permitted by Hindu law.

Executive control of endowments withdrawn,

but their existence recognised.

Necessity of Civil Courts' jurisdiction.

Cases where
jurisdiction
was exercised.

Sevaks are
trustees "for
public chari-
table purposes"
within meaning
of s. 539, C. P.
C.

Votaries in-
terested in
the proper
application of
offerings.

involved in the exercise of this jurisdiction, and does not stand in the way of it.—*Krishnasami Chetti v. Virasami Chetti*.¹ It is recognised by the indigenous customary law that an affair in which the castes could not or would not give relief is a proper subject of adjudication by the ordinary Civil Courts.² The cases in which Hindu foundations and charitable (including religious) trusts have been enforced and the person connected with them made accountable by the Civil Courts are too numerous to mention. Reference may be made to *Maharanee Shibessouree Debia v. Mothooranath Acharjo*;³ *Mohunt Burm Suroop Dass v. Khashee Jha*;⁴ *Jaggodumba Dossee v. Puddomoney Dossee*;⁵ *Dhurrum Singh v. Kissen Singh*.⁶ If, then, there is, in the present case, a public purpose, for the fulfilment of which, a class of persons, for whose benefit, in a way admitted by the State as deserving protection, the property of the Dákor temple is held, and its revenues are received by the defendants, the defendants become by these mere circumstances amenable to the jurisdiction we are now called on to exercise. The religion of the Hindu population being jurally allowed, the duties and services connected with it must be deemed objects of public concern, and at least as to their physical and secular elements enforceable like other obligations.

"The evidence recorded in this case, including that of many donors to the idol Shri Ranchhod Ráiji, shows that having discharged a religious duty or gained religious merit by a gift to the deity, the votary is but little interested in what afterwards becomes of the offering."⁷

¹ I. L. R., 10 Mad., 133, 144;
W. & B., H. L., 599 n.

² West and Bühler, H. L., p.
1007 n (c); Steele, L. C., 185, 186,
and 267.

³ 13 Moore's I. A., 270.

⁴ 20 Calc. W. R., Civ. Rul., 471.

⁵ 15 Beng. L. R., 318.

⁶ I. L. R., 7 Calc., 767.

⁷ West and Bühler, H. L., pp.
197, 411. Vya May, chap. IV, s. 1,
p. 8.

Still he must needs be and is concerned in the maintenance of a decent and orderly worship. He is interested, too, in honour and respect of the deity he reveres. He does not attend to pander to unrestricted licentiousness or mere ignorant sensuality which must bring his deity and its worship into contempt. He desires a regular and continuous or, at least, a periodical round of sacred ceremonies, which might fail if the offering of past years were all squandered while those of any given years fell short. The *sevak*s seem to have received the offerings both of immoveables and of moveables with a consciousness, though but a hazy consciousness, that they were bound, out of the funds thus coming to them, to provide for the worship of the idol, and the convenience of the pilgrims, who resort to the temple."

Sevak's liability as trustee.

Then, after discussing certain items of evidence adduced in the case, the judgment proceeds :—

"The Hindu law, like the Roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the judicial persons or subjects called foundations.¹ A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it,² and the rules will give effect to the bounty, and at least protect it so far, at any rate, as it is consistent with his own *dharma* or conceptions of morality.³ A trust is not required for this purpose; the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law.⁴ In early times a gift placed, as

Corporate bodies and 'foundations' recognised by Hindu law.

Trust not necessary for Hindu religious or charitable endowments.

A comparison with old English law.

¹ West and Bühler, H. L., pp. 201, 185, 553, 555.

² West and Bühler, H. L., pp. 99, 197, 216.

³ West and Bühler, H. L., p. 33; Manu VIII, 41; Coleb. Dig., B. III, chap. II, T. 28.

⁴ Spence Eq. Juris., p. 440; Sav. Syst, s. 88.

it was expressed, "on the altar of God" sufficed to convey to the Church the lands thus dedicated.¹ Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities.² After Christianity had become the religion of the empire, dedications for particular churches or for the foundations of churches and of religious and charitable institutions were much encouraged.³ The officials of the Church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses,⁴ but the immediate beneficiary was conceived as a personified realization of the Church, hospital, or fund for ransoming prisoners from captivity.⁵ Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts and by furnishing an ideal centre for an institution to which necessary human attributes are ascribed—*Dhadphate v. Gurav* (I. L. R., 6 Bom. 122)—it makes the application of the rules of law easy as in the case of an infant or a lunatic.⁶ Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed *extra commercium*,⁷ with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes.⁸ Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Rájji. This restriction is like the one by which the Emperor forbade the aliena-

An example from mercantile practice.

Nature of property dedicated to idol.

¹ See Elton's Ten. of Kent, 17, 18.

² W. & B. & H. L., p. 185 (i) Ulpian Fr., XXII, s. 6. They were thus placed *extra commercium*, Sav. Syst., sec. 88 (cc).

³ Sav. Syst., sec. 88; compare W. & B., p. 197.

⁴ Sav. Syst., sec. 88.

⁵ Sav. Syst., sec. 88.

⁶ Sav. Syst., sec. 90. Comp. *Kinlock v. Secretary of State for India in Council*, I. L. R., 15 Ch. Div., at p. 8.

⁷ W. & B., H. L., pp. 185, 197.

⁸ See Cod Lib., I. T., 2 Fr., 21 W. & B., H. L., pp. 555, 557. See also *Rupa Jagset v. Krishnaji Govind*, I. L. R., 9 Bom., p. 169.

tion of dedicated lands under any circumstances.¹ It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dákor. It is not consistent with the juridical persons being conceived as a mere slave or property of the *sevaks* whose very title implies not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Ráiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind of property incur thereby a responsibility for its due application to the purposes of the foundation. (Compare *Griffin v. Griffin*,² *Mulhallen v. Marum*,³ *Aberdeen Town Council v. Aberdeen University*.⁴) They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought against them for maladministration⁵ by a suit open to any one interested, as under the Roman system in a like case by means of *populares actio*.” * * *

“The witness Shívlal (Exhibit 157) says, the *sevaks* take all the offerings, but still, ‘as representative of the deity.’ Jamnadas (Exhibit 197), a bountiful donor to the temple, says, the offerings are made to the god, though the *sevaks* divide them at their discretion. This is what the *sevaks* would naturally do, even as managers, unless called to

Proprietary rights vest in the idol and not in the *sevaks*.

Sevaks responsible trustees.

Remedy against maladministration.

Sevaks not owners of idol as a juridical person.

¹ Vyav. May, Chap. IV, s. VII, p. 23; Nov. 120, Cap. 10.

⁴ L. R., 2 Ap. Cas., 544.

² 1 Sch. & Lef., 352.

³ Compare Indian Trusts Act II of 1882, ss. 88, 95.

⁵ 3 Dr. & War., 317.

account by some superior authority. It by no means necessitates the conclusion that they are and have always been owners of the idol as a juridical person.—*Juggodumba Dossee v. Paddomoney Dossee*¹. They are a numerous body, about one hundred and fifty in number, succeeding to their offices by hereditary descent. It is admitted that they are entitled to a fair provision for their needs and to maintain the service of the temple. For a period excluding over several centuries the revenues of the temple seem to have but slightly, if at all, exceeded the outlay required to maintain its services, but recently these revenues have very largely increased. The law which protects the foundation against external violence guards it also internally against maladministration, and regulates, conformably to the central principle of the institution, the use of its augmented funds. It is only as subject to this control in the general interest of the community that the State through the Law Courts recognizes a merely artificial person.² It guards property and rights as devoted, and thus belonging, so to speak, to a particular allowed purpose only on a condition of basing the application when either the purpose has become impracticable, useless or pernicious, or the funds have augmented in an extraordinary measure. This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern Codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtedly recognizes artificial juridical persons, such as the institution at Dákor, and could not, any more than any other law, support a foundation merely as a means of squandering in waste or profligacy the funds dedicated by the devout to pious uses.”

The external and internal protective character of law.

The dominant control of the Sovereign, in the interest of the public.

Summary.

85. The judgment which I have thus read may take rank as a leading case on the subject, and as I shall have

¹ 15 Beng. L. R., 318.

² See Sav. Syst., sec. 89.

occasion often to refer to it, I think it is convenient that you should be familiar with it as a whole. For our present purposes you will have observed that it is distinct authority for the juridical existence of the idol as a legal entity—a person who is capable of receiving property and exercising the rights incident thereto—a proprietor, who never dies, and about whom consequently no rules of inheritance need be discussed, but one nevertheless labouring under physical disabilities which render it necessary that his interests should be looked after primarily by a worshipper subject to the eventual control of the ruling power.

86. The books of ritual contain a direction that before *The Utsarga*, removing the image into the temple, the building itself should be formally given away to the god for whom it is intended. The *sankalpa*, or formula of resolve, makes the deity himself the recipient of the gift which, as in the case of other gifts, has to be made by the donor taking in his hands water,¹ sesamum, the sacred *kusa* grass, and the like. It is this ceremony which divests the proprietorship of the temple from the builder and vests it in the image which, by the process of vivification, has acquired existence as a juridical personage. *Vijnaneshwara* in the *Mitakshara*,² says that “gift consists in the relinquishment of one’s own right, and the creation of the right of another, and the creation of another’s right is completed on that other’s acceptance of the gift, but not otherwise. Acceptance is made by three means,—mental, verbal, or corporeal. Mental acceptance is the determination to appropriate; verbal acceptance is the utterance of the expression,—this is mine, or the like; corporeal acceptance is manifold, as by

Its legal effect.

Gift is completed by acceptance.

¹ All *dānas* or gifts are enjoined by Kamalakara to be bestowed *in* water, “and where there can be no recipient as in the case of *Mathas* for *Sanyāsins*, the offering

water is thrown into a pot of water.”

² Quoted in Mayne’s *Hindu Law and Usage*, para. 351, p. 404; Macnaughten’s *Mitakshara*, p. 78,

Acceptance
by idol.

touching." In the case under consideration the *utsarga* is the relinquishment of the donor's right, and the gift is completed by the acceptance corporeally made by the donee,—the image,—which is made to take bodily possession of the premises. Compare ceremony of renunciation in case of Tanks and Wells (Chapter VIII, *Lecture X*).

Concluding
ceremonies.

87. After the installation of the image in the temple, the rituals prescribe the performance of the *ārati* or lustration ceremony to conclude with a feast to the Brahmins,¹ whose numbers according to the *Matsya Purana*² range from one thousand to twenty according to the means of the worshipper. The ceremony, concludes with gifts to the poor,—a general festival of dancing and music.³

Subsequent
duties : daily
worship.

88. The deity so established has to be worshipped daily. According to the *Mahā Kapila Pancharātra*,⁴ if the worship is neglected for one day, it should be doubled on the next ; if the worship has been neglected for three nights, then a *Mahā Pujā* or worship on a grand scale should be performed ; for a neglect of worship for a longer period the ceremony of *samprokshana* or sprinkling is enjoined. If the worship has been discontinued for more than a month, some ordain the sprinkling ceremony, and others ordain the repetition of the installation ceremony (*pṛatishthā*). The sprinkling (*samprokshana*) ceremony includes washing the image with the liquid productions of the cow, and with *kusa* water, and the repetition of the *Prana Pratishtha* or vivification ceremony.

Repurification
in case of
cessation ;

in case of
image being
defiled.

89. In case of the image being defiled by the touch of any impure substance, *Baudhāyana* directs, firstly, the purification appropriate to the material of which the image is composed, and a subsequent repetition of the

¹ S. K. D., loc. *Mattha*, p. 3169.

² S. K. D., loc. *Pratishthā*, p.
2545.

³ S. K. D., loc. *Mattha*, p. 3169.

⁴ S. K. D., loc. *Pratishthā*, p.
2545.

installation (*pratishthá*) ceremony, when it becomes again a fit object for worship. According to the *Aditya Purána*,¹ the gods cease to reside in images which are mutilated ; broken, burnt ; deprived of ornaments, or of vehicles ; touched by beasts ; fallen in a contaminated place ; worshipped by the *mantras* of another god ; and defiled by the touch of an outcaste. The *Brihan-Naradiya Purána*² declares that women, Sudras, and those uninvested with the sacred cord, have no right to touch images of *Vishnú* or *Siva*.³ The person who salutes the *lingam*, or the image of *Vishnú*, which has been touched by a Sudra or the like, suffers endless torments in after-life. The horror displayed towards the worship by other sects is more fully described in the *Padma Purána* ⁴ :—“ The installation of *Vishnú* and the like should not be performed by *Sáktas* ; such works when so done are not acceptable to *Vishnú*.”

90. The *Shastras* of the Hindus are assiduous in inculcating the necessity of maintaining and repairing the pious works established by previous generations. According to the *Vishnú Dharma*,⁵ the kingdom where temples decay suffers a proportionate decline, and the merit of repairing an old temple is certainly double that of the original builder. According to the *Vishnú Rahasya*,⁶ the person who rebuilds a fallen temple, or repairs one about to fall, attains the abode of *Vishnú*. It is said in the *Agni Purána* that the person who re-erects a temple of *Vishnú*, which has fallen down, or is about to fall down, or is half broken, obtains double the merit of the original architect. In later times the reward has been greatly increased. Thus the *Devi Purána*⁷ recites that the reward

Maintenance
and preserv-
ation of pious
works.

¹ S. K. D., loc. <i>Pratishthá</i> , pp. 2545-46.	⁵ S. K. D. loc. <i>Mandiram</i> , p. 3273.
² Ditto ditto, p. 2546.	⁶ Ditto ditto.
³ Ditto ditto, p. 2542.	⁷ Ditto ditto, p. 3274.
⁴ Ditto ditto, p. 2537.	

of the repairer of old (temples) is hundred-fold that of the original builder ; hence a man should take every care to repair old temples ; and in the *Hayasirsha Pancharâtra* the same reward is promised to the repairers of old temples and images. The same promise is held out by the sage *Yama* in his *Smṛiti Samhita*, sl. 70. *Manu*, in Chapter IX, sls. 280 and 285, lays down the punishment to be inflicted by the King on those who break open divine temples or break divine images ; and in the *Matsya Sūkta* the former class is threatened in after-life with punishment in the shape of being transformed into a particular tree.

Image worship,
a daily duty of
Brahmins.

91. The worship of the gods is one of the daily duties of a Brahmin enjoined by *Parásara*,¹ and *Manu* (II, 176) describes the following as part of the duties of a religious student,—*Brahmachâri* :—

“Day by day, having bathed and being purified, let him offer fresh water to the gods, the sages, and the manes ; let him shew respect to the images of the deities, and bring wood for the oblation to fire.” The duty, so far as the householder is concerned, is laid down by *Manu* in Chapter IV, sl. 56, where the adoration of the gods is enumerated amongst the duties to be performed at the beginning of each day.

Respect due to
images.

92. According to the same sage, the shadow of a divine image should not be trodden upon (IV, 130), and in passing by the same they should be honored by always keeping them to the right side (IV, 39) ; and the same injunction is enjoined as to temples by *Gautama* in his *Dharma Sutra* (IX, 66). *Manu* directs temples dedicated to the gods to be erected on common limits (VIII, 248), and he also directs in connection with the duties of a king that “having conquered a country, let him respect the deities adored in it and their virtuous priests” (VIII, 201). The

¹ Institutes, I, 38.

uncovering of the feet being undoubtedly one of the old established ways of shewing respect to a superior, we are not surprised at the injunction of Atri¹ that gods should not be worshipped with covered feet, or at the similar direction of Angirā that in approaching deities shoes should be discarded.

93. When an idol has once been consecrated by appropriate ceremonies, the deity of which the idol is the visible image resides in it, and not in any substituted image. This principle was laid down by a ruling of the Calcutta High Court in the case of *Doorga Proshad Dass*, plaintiff-appellant, v. *Sheo Proshad Pandah*, defendant-respondent (7 Calcutta Law Reports, p. 278). The plaintiff sued to recover certain land alleged to be *dewuttor* and dedicated to a family idol named Sree Russick Roy Jeo, which had been alienated together with the idol by his father, and purchased by the defendant. He did not sue to recover the idol. The case, on coming up before the High Court, the Court doubted the reality of the alleged dedication to the idol; was not satisfied that the plaintiff was entitled to sue as a *sebaī*; and was doubtful whether he was suing *bonā fide* for the benefit of the idol, or simply in order to get back the property into the possession of the family. The case was consequently remanded to the lower Courts for deciding the questions which were all eventually decided in favour of the plaintiff. At the trial after remand, new points were raised. The defendant No. 2 had bought not only the property in dispute, but the idol, and his defence was that he was duly carrying on the worship of the idol from the profit of the property. The plaintiff did not seek to recover the idol, but pretended that the idol was still in his possession, and that the defendant had acquired only a

Legal effect of consecration.

¹ Atri Samhita, sls. 321-322.

specious idol. It was, however found, that the idol was really in the defendant's possession. But the lower Court held that, although this was so, and although plaintiff was not seeking to recover it, he could still recover the land without the idol, and there was nothing in the Hindu religion to prevent the plaintiff from replacing the idol by a new one as in the case of breakage or loss.

The deity resides in consecrated image which cannot be substituted.

The High Court held such decision to be wrong. Macdonell and Tottenham, JJ., in their judgment, observe: "We believe that, according to Hindu notions, when an idol has once been, so to say, consecrated by the appropriate ceremony performed, and *Mantra* pronounced, the deity, of which the idol is the visible image, resides in it, and not in any substituted image, and the idol, so spiritualised, becomes what has been termed a juridical person. It does not by any means follow that, because the idol now in question has passed into the possession of the defendant, together with the property dedicated to it, it has thereby fallen into the condition of a lost or broken idol which, by Hindu law, may be replaced. The question appears to us not to be, as understood by the Judge, whether the idol is lost to the plaintiff; but whether as the seat of the deity, it has ceased to exist. At any rate, so far as we know, there is at present no other idol, —Sri Russick Roy Jeo,—and the land in dispute was certainly dedicated to this one which is in possession of the defendant. The effect, therefore, of a decree in plaintiff's favour for the land without his idol would be to sever the one from the other. We think, therefore, that plaintiffs are not entitled to recover the land in the present suit, and that it ought to have been dismissed in the first Court."

Property follows the image.

CHAPTER V.

(Lecture V.)

ON ENDOWMENTS FOR THE SERVICE OF IMAGES.

THE WORSHIP: discontinued in case of gift images, 1; daily service of consecrated images:—Sweeping the Temple, 2; smearing, 3; removing the *nirmalya* and presenting fresh offerings, 4. Persons unable or incapable to worship may appoint Brahmins, 5.—**PERPETUATION OF WORSHIP BY ENDOWMENT**: Religious merit acquired by gift of land, 6. Assent of State not necessary for endowment (*Juggut Mohini Dossee v. Sokhumoney Dossee*), 7. **EVIDENCE OF ENDOWMENT**: the mode of dedication, gift to idol or to *sebait* as his representative, 8; grant by deed usual, where dedicator himself *sebait*, *ib.*: documentary evidence not absolutely necessary, 9; use of land-proceeds for idol-service not proof of dedication, *ib.*; but may corroborate original grant (*Muddun Lall v. Komal Bibee*), *ib.*; documentary evidence very necessary to prove actual dedication (*Soshikishore Bundopodhya v. Rani Chooramoney Pulto Mahadeb*), *ib.*; evidence must be strong and clear, *ib.*; presumption from the conduct of parties (*Kunwar Durga Nath Roy v. Ram Churn Sen*), *ib.* Service of idols only a moral duty where no direct endowment (*Sham Lal Sen v. Huro Soonduree Gupta*), 10. Remission of Government revenue not conclusive evidence of the land's present *dewuttar* character, 11; *Nimaye Churn Puteetundee v. Jogendro Nath Banerjee*, *ib.*; purchasing property in the name of an idol not endowment (*Maharani Braja-soondari Debya v. Rani Luchmi Kumari*), 12. **EFFECTS OF ENDOWMENT**: Limited powers of *sebait* as of manager or trustee (*Maharanes Shibessouree Debya v. Mathuranath Acharjo*), 13; *Prasannamayee Dassi v. Koonja Behari Chowdhury*, 14; *Prasunna Kumari Debya v. Golab Chand Babu*; Idol's estate not ordinarily alienable, 15; but loans for necessary purposes valid, 16; Decree on a *sebait* if properly obtained binding on his successor, 17. Apparent authority for idol's estate not being sold in execution, *rents and profits* only being sequestered, 18. Grant of a *mokurrari* lease and sale of part of the *mokurrari* rent by a *sebait* allowable for a necessary purpose (*Kunwar Durga Nath Roy v. Ram Churn Sen*), 19.

1. I explained in the preceding lecture how, under Hindu legal conceptions, a consecrated image established for worship could not be the property of any particular

- Gift images. person or persons. A distinction has to be drawn in the case of images which are given away as gifts with particular objects. The subject is treated under the heading of *Devatādāna* by Hemādri in the eleventh chapter of the *Dānakhaṇḍa* of his encyclopædic work, *Chaturvarga Chintamani*. The image of a particular deity is prepared of particular materials, mostly valuable ; the preliminary processes in a *pratishthā*, like the erection of a *mandapa* and the performance of the *adhivāsa* are observed ; the worship of the deity concerned is then gone through with appropriate texts, and the image itself made over as a gift to qualified Brahmins for the purpose of propitiating that deity and thereby procuring a release from specified diseases or infirmities. Apparently, the image so given away is not to be retained by the donee for purposes of worship, but is to be broken up and utilised for its component materials. The sanctity of the image in this particular case is temporary, and not permanent, it does not become a juridical person, possessed of proprietary rights, but is given away expressly as a chattel, which upon such gift becomes the absolute property of the donee, to be dealt with by him at his own will and pleasure free from any trusts for worship ; and is indeed in the majority of cases devoted to immediate destruction, consigned to the melting pot for the purpose of realising a money-value.
- Not for worship. Property of the donee.
- Daily service : 2. To return to the normal type of consecrated image for continued worship. We have followed its history up to its being installed in its own temple and honored with daily worship. The worshipper is directed to awake early in the morning and to purify himself.¹ He is then to sweep the temple with a piece of cloth or with a broom made of specified materials. *Atri*² in his *Smṛiti Samhita*
- (a) Sweeping the temple ;

¹ प्राणतोषिणी, p. 183.² Sloka 317.

declares the contact of ordinary sweepings to be destructive of all *punya* (religious merit) acquired during the day, but an exception is made in the case of temple-sweepings; ¹ one covered with them being declared to be as holy as one bathed in the waters of the Ganges. In the *Yogini-Tantra* ² the devotee is promised spiritual bliss for a thousand years for every particle of dust raised by the sweeping.

3. After sweeping comes the process of smearing ^{(b) Smearing;} (*upalepana*). This, according to the same authority, has to be done with earth and cow-dung, and here, again, in the hyperbolic language common to this class of works, a reward of a thousand years' spiritual bliss is promised for every drop of water used in the smearing process.

4. The next step is to remove the *nirmālya*, or the ^{(c) Removing} remains of the previous day's offerings of flowers, &c. ^{*nirmālya*;} ³ A text declares the non-removal of the *nirmālya* to be as destructive of religious merit as the confinement of a thirsty animal or the menstruation of an unmarried daughter. According to the *Mantra Tantra Prakāsha*,⁴ the devotee, after removing the remains of the previous day's offerings, should present the deity with an offering ^{(d) Offerings.} of flowers; of *arghya*, or a respectful oblation of rice, *durvā grass*, flowers, &c., with water; of *pādya*, or water, for washing the feet; as also of other articles necessary for washing the mouth, and so on. The deity, in short, is conceived as a living being; and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through; the living image is regaled with the necessities and luxuries of life in due succession, even to the changing of clothes, the offering of food and the retirement to rest.

¹ Sloka 316.

² प्राणतोषिणी, p. 183.

³ प्राणतोषिणी, p. 183.

⁴ प्राणतोषिणी, p. 183.

Who can worship?

5. Great as is the religious merit of personally performing these services for the deity, the endower has not always the inclination or the capacity to perform them. Apart from the question of physical capacity there is that of religious capacity. Thus it is said in the *Vrihan-Naradiya Purána*,¹ "Women; those uninvested with the sacred thread, *i.e.* (the members of the *dvija* class before the initiation ceremony has been performed for them); and Sudras are not competent to touch images of Vishnu or Siva. A Sudra, one uninvested with the sacred thread, a woman or an outcaste, having touched Vishnu or Siva, goes to hell." In the *Padma Purána*² and other treatises such incapacitated persons are directed to have the worship performed through Brahmins.

Reasons for endowments.

6. A person having established an idol in a temple would naturally be anxious to devise means for the perpetuation of the worship. In ancient times rights in land were the only permanent rights known to the people. The gift of land is extolled in the *Shastras* as productive of the greatest religious merit. In the *Mahabharata*,³ it is said among other things, that the donor of land shines in heaven so long as the land, which is the subject of gift, lasts, as the moon increases day by day, so does the religious merit of a gift of land increase with each succeeding crop.⁴ The permanence of the benefit conferred is no doubt the principal reason for the high position which the *Shastras* accord to the gift of land as a source of religious merit. Ordinarily, the gift contemplated is the gift of land to pious *Brahmins* in their own right as *brahmottar*, but special rewards are also promised for the gift of lands to the gods (*devottar*). Thus in the *Vishnu Dharmottara*⁵ it is said that the donor

Merits of gift of land.

Brahmottar
and *Devottar*
or *Devuttar*.

¹ प्राबलोचिषौ, p. 401.

² Hemádri, Danakhanda, p. 495.

³ प्राबलोचिषौ, p. 401.

⁴ Hemádri, Danakhanda, p. 497.

⁵ Hemádri, Danakhanda, p. 502.

of land for the erection of a temple attains the abode of the particular deity to whom the temple is dedicated. In the *Siva Dharma* ¹ it is declared that he who dedicates to *Siva* cultivated land, dwells in bliss in the *Rudra loka* for as many *kalpas* as there are (*dandas*) poles of land found on measurement. In the *Varāha Purāna*, ² the bestower of a skin of land to Vishnu is promised fortune and prosperity for seven births, and it is also mentioned there that he who dedicates a field or a house for the enjoyment of Vishnu is released from all his sins. The *Bhaviṣya Purāna* ³ similarly treats of the benefits to be derived from dedicating lands to *Surya*.

7. For all these reasons the gift of lands to temples has been always a favourite form of endowment with the Hindus. The Hindu proprietor is absolutely free to dedicate his property to the service of his deity, and the assent of the ruling power is not necessary to confer validity upon the dedication. In the case of *Juggut Mohini Dossee v. Sokheemoney Dossee*, ⁴ it was argued by the appellants before the Privy Council, that certain instruments dedicating certain lands for the worship of the family idols required the assent of the State, and that in the absence of such assent those instruments were to be regarded as merely revocable appropriations, of which the founders might vary the use. The Judicial Committee of the Privy Council, however, remarked: "No authority whatever was adduced in support of this position, which strikes at the root of most modern endowments of the like nature. A family trust of this nature has never in modern times, at least, been held to require such an assent. The cases supporting such trusts are too numerous for citation."

A Hindu's
power to
endow.

Assent of State
not necessary.

¹ Hemādri, Danakhanda, p. 508.

² Hemādri, Danakhanda, p. 510.

³ Hemādri, Danakhanda, p. 510.

⁴ 14 M. I. A., p. 302.

Evidence of
endowment :
Mode of dedi-
cation.

Documentary
evidence not
absolutely
necessary.

Muddun Lall
v. *Komul Bi-*
bee.

8. The mode of dedication of land for the service of the deity would be the same as in the case of the temple. If the deity had a separate *sebait* the gift would be made into the hands of such *sebait* as the representative of the deity and possession by the latter would be the completion of the gift. If, however, as is generally the case, the dedicator of land is himself the *sebait*, he would follow up the religious ceremony by executing a deed of dedication in the name of the deity, and, so far as practicable, indicating by his future conduct and dealing the change in the ownership. "Documentary evidence is not absolutely necessary to prove an endowment. The mere fact of the proceeds of any land being used for the support of an idol may not be proof that those lands formed an endowment for the purpose, but where there is apparently good evidence going back for more than half-a-century that the land was so given, proof that from that time the proceeds had been so expended would be strong corroboration of the original grant—*Muddun Lall v. Komul Bibee*.¹ In this case, the Principal Sudder Ameen in holding that the land in suit was not endowed land seems to have relied upon the following marginal note in the case of *Mahomed Noorbuksh v. Budun Chund Bibee* alias *Aze-zoonnissa*,² :—"Property not recognized as *wukf* without documentary proof." Glover, J., in commenting on this observed : "The marginal note in that case does, no doubt, lay down the law that endowments can only be proved by documentary evidence, but there is no mention of this dictum in the body of the decision, and we are not aware of any ruling of this Court which makes documentary proof a *sine qua non*. In the great majority of cases, it would, of course, be looked for, but its absence

¹ 8 W. R., p. 43.

² S. D. A. Reports, 1852, p. 885.

would not necessarily put the party suing under an endowment out of Court."

9. Documentary evidence is, however, very necessary to prove an actual dedication. Thus it has been held that the mere fact of the proceeds of a piece of land having been appropriated for the worship of an idol, does not constitute it an endowed property; but the fact of the assignment to the idol must be specifically proved, *Narain Prosad Myti v. Ruder Narain Myte*¹; and in the case of *Soshikishore Bundopodhya and others v. Ranee Chooramoney Putto Moha-debi and others*,² the learned Judges dwelt upon the necessity of enquiring as to whether the land in dispute which was being claimed as *dewuttor* had been publicly assigned as *dewuttor*.

It has been held in *Ram Pershad Doss Adhikari and others v. Sreehuree Doss Adikaree and others*,³ that the mere fact that a portion of the profits of land in the possession of a party had been for some time used for the worship of an idol is no proof of an endowment; and the nature of the evidence necessary to prove an actual dedication is very clearly indicated in the following observations of the Privy Council in the case of *Konwur Doorganath Roy v. Ram Chunder Sen and others*⁴ :—

"If that document (Deed of Endowment) is out of the case, there is very slight evidence indeed of any such endowment. The case then rests, independently of the admissions in the deeds, upon the evidence of the *dewan* and *mookhtear* and one or two other witnesses that the rents of this *mehal Gopejan* were applied to the worship of this idol. But that evidence is extremely vague and loose. The *mookhtear* says in several places that the

Documentary evidence when necessary.

Mere use of land-proceeds not evidence.

Nature of evidence wanted.

¹ 2 Hay., p. 490.

² 18 W. R., p. 399.

³ W. R., Gap No., Civil Rulings, p. 107.

⁴ My P. C. J., Vol. III, pp. 684-5; 4 Cowell's I. A., p. 52.

rents were applied to the worship of the idols, and it is plain from all the evidence in the case that there were several idols belonging to this family, and no doubt the rents of some of the family *mehals* were applied to sustain their temples and worship. But supposing it to be taken that the rents of this *mehal* were applied during the period the witnesses speak of, to the worship of the idol *Radhamohun*, that fact is by no means sufficient to establish the *onus* which lies upon a party who sets up the case that property has been inalienably conferred upon an idol to sustain its worship. Very strong and clear evidence of such an endowment ought to exist. In the present case there is no proof that priests were appointed. If any had been appointed, they might have been called. There is no production of accounts shewing that the rents were separately collected and applied for the worship of this idol. For anything that appears, the rents may have gone into the general body of the accounts relating to the estates of this family, and there is really no document whatever upon which the finger can be placed to shew that an endowment was made, other than that *rubicari* to which reference has already been made.

Presumptions
from the con-
duct of parties.

“ Besides the weakness of the proof of endowment on the part of the plaintiff, strong presumptions, that there was none, arise from other facts and circumstances in the case. It is said that the application of the rents of this particular *mehal* for a certain period to this idol is some evidence that the family were aware that the rents were properly and by right so to be devoted ; but if the conduct of the family is to be regarded, there is, on the other side, the strongest indication, from what occurred in the suit brought by *Bhagiruthi*, the widow of the eldest brother of *Bijoy*, that the family understood that there was

no such endowment. That suit was brought by *Bhagiruthi* to recover from *Rashmoni* one-third of the *mehal* in question. She did not claim it as property to which she was entitled as joint *sebait*, but she claimed it as one-third of the family estate to which she, as widow of one of the brothers, was entitled. That is her claim. *Rashmoni* does not set up as a defence that the *mehal* was *dewuttor* property devoted to this idol; that she was the *sebait*, and entitled, at all events, to the possession and the management of it—she sets up no case of that sort—but allows a decree to be passed against her in favour of *Bhagiruthi* to recover one-third of the *mehal*, and in that decree the property is described, not as *dewuttor*, but as *brahmottar* property.

“Now, if this *mehal* had been really dedicated to the idol, it would no longer have been a partible estate. *Rashmoni* would, as *sebait*, have been entitled to the possession of it, and to the management and disposition of the revenues; and all that *Bhagiruthi* could have been entitled to would have been a share in the surplus revenues, if there should have been a surplus, after due provisions have been made for the worship of the idol.

“Therefore there is not only weakness of proof on the part of the plaintiff, but a very strong presumption, arising from the conduct of the parties in the suit in question, that this was not *dewuttor* property such as is alleged to be on the part of the plaintiff.”

10. It was decided in the case of *Sham Lal Set v. Huro Soonduree Goopta and others*,¹ that when there had been no direct endowment to support the worship of the family idol, although a moral obligation might be created by Hindu usage and custom, such moral obligation would not have any legal operation.

Nature of obligation where no direct endowment.

¹ 5 W. R., p. 29.

11. The mere fact of land having been released by Government as appropriated to the services of an idol does not impose upon it the character of a religious endowment, and is not conclusive evidence of its present *devuttor* character as against creditors. This was decided in connection with the Kalighat land in the case of *Nimaye Churn Puteetundee v. Jogendro Nath Banerjee*.¹

*Nimaye Churn
Puteetundee v.
Jogendro Nath
Banerjee.*

In this case, the appellant, the decree-holder, in execution, attached certain lands possessed by the judgment-debtors. The latter objected that the lands were not their property but held by them as *sebaits* of a religious endowment. The Munsiff found that, although the land formed part of some which has been released by Government as appropriated to religious purposes, they were held by defendants entirely to their own use and dealt with them at their pleasure. They were in that way quite distinct from the lands definitely held for and devoted to the service of the idol. The objection, therefore, was overruled by the Munsiff. The District Judge, however, in appeal, held: "The mere misconduct of and fraudulent misappropriation of the proceeds by the priest or other person cannot affect the matter and render it liable to sale." The Court could not treat the lands as private property. The High Court in appeal (Jackson and Ainslie, JJ.), in setting aside the judgment of the District Judge, remarked: "We cannot admit that the fact of the land having been released for that reason imposes upon it a character of religious endowment so as to exempt it permanently from being attached and sold in satisfaction of decrees against a person who may hold it. Cases may be easily imagined in which, whatever the original use and purpose of the lands may have been, they may in time have become detached from those purposes and have come into the hands of

¹ 21 W. R., p. 365.

some private person, and the case might be such that a suit to recover them for the benefit of the idol would be barred. It would be idle, we think, in that case to say that the right, title, and interest of the person in possession could not be sold in satisfaction of a decree against him. Whether the right of the idol is in full force and vigor at present or not, it is clear that the defendants have been using the proceeds of the lands and dealing with them as if they had the full ownership. In that state of things, we think there was an interest which the decree-holder was at liberty to attach and cause to be sold, leaving the question what had been sold to be settled ultimately between the purchaser and the representative of the idol." ¹

12. The mere purchase of a property in the name of an idol will not be sufficient to create an endowment. In the Privy Council case of *Maharanee Brojosoondery Debee v. Ranee Luchmee Koonwaree and others*,² this point arose for decision and the following observations of their Lordships are very important:—

"But the question is whether there is any evidence of an endowment property so-called. Now what is the evidence of an endowment? This is clearly not an

¹ It was also incidentally laid down in this case that the order of the Munsiff should be treated as an order under S. 246 of the Civil Procedure Code, and that no appeal lay from it to the District Court. For if such orders were treated as orders under S. 11, Act XXIII of 1861, it must be held that a decision of the Court executing the decree otherwise than as reversed or altered on appeal would be final. Then, it seemed clear that it would be competent to any party interested to impugn the conduct of the *sebai*

and bring a suit for the purpose of establishing the right of the idol. In this view of the case, their Lordships preferred to be bound by the authority of the decisions in *Kalee Churn Gir Gossain v. Bungshee Mohun Doss and another* (15 W.R., p. 339) and *Radha Kishen and others v. Shah Ameerooddeen* (11 W.R., p. 204), and accordingly ruled that there was no appeal to the District Court. But in either point of view they thought the decision of the Munsiff was right and ought to be maintained.

² 20 W. R., pp. 96-97.

endowment for the benefit of the public. The idol was not set up for the benefit of the public worship. There are no priests appointed,—no Brahmins who have any legal interest whatever in the fund. It is not like a temple endowed for the support of Brahmins, for the purpose of performing religious service for the benefit of any Hindu who might please to go there. It is simply an idol set up by the Maharajah, apparently in his own house, and for what purpose? Why, for his own worship. We constantly have suits claiming certain turns of worship, but here there is no turn or right of worship established. There is nothing stated in any way to show that the Maharajah intended that the idol should be kept up for the benefit of his heirs in perpetuity; and before it can be established that lands have been endowed in perpetuity, so that they can never be sold and must be tied up in perpetuity, some clear evidence of an endowment must be given. What are the objects of the endowment? None of the essentials of an endowment are stated. The Maharajah appears to have purchased the property in the name of the idol, and that is all. Then he deals with the funds of the idol as if it were his own property. There is no evidence at all of any of the essentials of an endowment in favour of the idol.

Nominal endowments.

“In the case of *Mohatab Chand and another*, in the 5th Volume of the Sudder Dewanny Adawlut Reports, 268, which was a very similar case, it was held that when an endowment is merely nominal, and indications of personal appropriation and exercise of proprietary right are found, a sale of the property is valid under the Hindu law.

“It appears, therefore, to their Lordships, upon the authority of that case, and upon the principle of endowments, that this was not an endowment by the Maharajah in perpetuity for the benefit of the idol, so as to establish

that the property so conveyed to the idol was to be the property of the idol for ever and that nobody could alienate it. Suppose the Maharajah had established the idol in his house, would anybody pretend that he could not sell his house? Well, then, what would become of the idol's temple in the house? He could sell the house, notwithstanding he had put an idol there; and what would become of the idol itself? Here there was no endowment, no priest, no public, no one legally interested in the worship of this idol, except the Maharajah himself, and nothing to show that the Maharajah intended to establish it for the benefit of his sons and heirs, or anybody else, in perpetuity."

13. You will thus perceive that in order to pass the property in the thing endowed from the endower to the idol, it is very necessary that there should be an actual and *bonâ fide* dedication of the property to the idol. After such dedication the idol becomes the proprietor, and the *sebit* is only the manager or trustee. This is very well put by the Privy Council in their judgment in the case of *Maharanee Shibessouree Debia v. Mothooranath Acharjo*¹:—

Effect of endowment:

A Privy Council case defining *sebit's* title as manager or trustee.

"The *talook* itself, with which these *jummas* were connected by tenure, was dedicated to the religious services of the idol. The rents constituted, therefore, in legal contemplation, its property. The *Sebit* had not the legal property, but only the title of Manager of a religious endowment.

"In the exercise of that office, she could not alienate the property, though she might create proper derivative tenures and estates conformable to usage."

He cannot alienate;

The plaintiff Mathuranath claimed to have acquired by purchase certain *mouroosee mokururee* tenures which he contended had been created by the *sebit* in favour of

¹ My P. C. J., Vol. II, p. 529.

his vendors. In discussing the evidence which had been adduced to prove the permanent nature of the tenure claimed by the plaintiff, the Privy Council remarked:—

Nor give permanent leases.

“Their Lordships think that there is no satisfactory proof in the cause that these *jummas* were ever held at a fixed invariable rent. One important element in this important enquiry has been wholly lost sight of, *viz.*, the nature of the *sebait* title, and its legal inability to be the source of such a derivative title. To create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a *sebait*, and is not therefore presumable.”

An earlier authority.

14. This case, therefore, is clear authority for the proposition that ordinarily a *sebait* cannot give permanent leases. The same principle had been laid down by the Calcutta High Court in an earlier case—*Prosunno Mayi Dassi and another* (defendants) v. *Koonjo Behari Choudhry and others* (plaintiffs).¹ The main facts of the case were:—One Gopeenath Gossain was appointed the *sebait* of an idol endowed by the ancestor of the plaintiffs. This Gossain, notwithstanding express prohibition in his deed of appointment, created a *mokururee* of the property in favour of one Nityanand, from whom the defendants appellants acquired it by purchase. The *mokururee* deed could not be produced, but the defendants contended to be allowed to remain in possession by right of prescription, on the ground that Nityanand had obtained ostensible possession from the Gossain, and they, the purchasers, have been in possession for about the past 30 years.

The Lower Court (the Principal Sudder Ameen) set aside the *mokururee* and delivered *khas* possession to the

¹ W. R., Sp. No., p. 157.

plaintiffs, as heir of the original founder ; and in appeal the question remained if the defendants should be allowed to remain in possession or not, as any other tenant, with long and unquestioned possession.

The High Court (Seaton-Karr and Glover, JJ.,) held in the negative, on the following amongst other grounds :—

“The endowment and the deed appointing a *sebait* clearly contained an express provision against the creation of any such encumbrance as is now the basis of the defendants’ claim. If their vendor ever had possession of the property, he had such possession with the knowledge of the restriction in that deed, and he could never look to retain any lease or possession of the whole *talook* beyond the term of the life of the Gossain from whom he derived what he had.

“Moreover, we think that even in the absence of any such special restriction, it might well be argued for the plaintiff that a *sebait* is in the position of trustee for the founder, and could not create permanent encumbrances to the injury of the endowed property, and also that, in conformity with the tenor of decisions of the late Sudder Court, no prescription derived from the trustee could in such cases run against the heirs and representatives of the founder.

“Thus under any view of the case, as above expressed, we are clear that the defendants can show no ground even for being retained in possession as tenants of the whole property, and we confirm the decision of the Sudder Ameen, which treated the alleged *pottah* as non-existent at any time, and dismiss this appeal with costs.”

15. The same considerations which restrict the powers of a *sebait* in granting leases apply with even greater force to restrict his powers of alienating the property altogether by sale or gift. In the Privy Council case

Idol's estate
not ordinarily
alienable ;

of *Prosunno Kumari Debya and another v. Golab Chand Babu*,¹ their Lordships observe that "there is no doubt that, as a general rule of Hindu Law, property given for the maintenance of religious worship and of charities connected with it, is *inalienable*." This was decided in an early *Vyavastha* given in the second volume of Macnaghten's *Precedents of Hindu Law*, p. 305, Case XIII, citing a text from the *Srimad Bhagavata* (Sec. XI) :—

"He who seizes the subsistence of the gods or of priests, whether given by himself or another, is born a reptile in ordure for a million of million years."

but liable for
sebit's loans
for necessary
purposes.

16. A *sebit*, however, in his capacity of manager has the same powers as a guardian as the manager of an infant to incur loans for necessary purposes, and such loans will bind the idol's estate. This point has been very fully elaborated in the Privy Council Judgment,² which I have already mentioned.

Extent of
sebit's powers.

"But, notwithstanding that property devoted to religious purposes is, as a rule, *inalienable*, it is, in their Lordships' opinion, competent for the *sebit* of property dedicated to the worship of an idol, in the capacity as *sebit* and manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temples or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them. The authority of the *sebit* of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir, which was thus defined

¹ My P. C. J., Vol. III, p. 450.

² Ditto, ditto p. 451.

in a judgment of this Committee, delivered by Lord Justice Knight Bruce :—

“The power of the manager for an infant heir to charge an estate not his own is, under the Hindu Law, a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. But where, in the particular instance, the charge is one that a prudent owner would make in order to benefit the estate, the *bonâ fide* lender is not affected by the precedent mismanagement of the estate. The actual pressure of the estate, the danger to be averted, or the benefit to be conferred upon it, in the particular instance, is the thing to be regarded. But, of course, if that danger arises or has arisen from any misconduct to which the lender is or has been a party, he cannot take advantage of his own wrong to support a charge in his own favour against the heir grounded on a necessity which his own wrong has helped to cause. Therefore, the lender in this case, unless he is shewn to have acted *malâ fide*, will not be affected, though it be shewn that with better management the estate might have been kept free from debt.” [See *Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree*.¹]

Analogous powers of manager of an infant.

“It is only in an ideal sense that property can be said to belong to an idol ; and the possession and management of it must in the nature of things be entrusted to some person as *sebait* or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued, for want of necessary funds to preserve and maintain them.”

Necessary character of *sebait's* powers.

¹ 6 M. I. A., p. 393; My P. C. J., Vol. I, p. 552.

When decree
against a *sebit*
binds his suc-
cessor ?

17. Some other important principles are laid down by the Privy Council in the same judgment. The first of these is that a decree *properly* obtained against one *sebit* binds his successor—the Courts taking care to see in each case that the decree had been properly obtained.

“Assuming, then, that a *sebit* may incur debts, or borrow money for necessary purposes, in the sense above explained, it appears to be right and reasonable that judgment obtained against a former *sebit* in respect of debts so incurred should be binding upon succeeding *sebait*s, who, in fact, form a continuing representation of the idol’s property.

“If such debts and the judgments founded on them were not held to be thus binding on successors, the consequence would be that no *sebit* would be able to obtain assistance in times of need ; for, on an apposite state of the law, he might defeat the creditors who had afforded it, by at once transferring the property to other *sebait*s, as actually done in the present case by *Rajah Baboo*, who, after the decrees were obtained against him, appointed the appellants, his wife and nephew *sebit* in his place.

“The above view is consistent with what appears to have been the opinion of this committee in the passage already cited from 13 Moore’s Indian Appeals and with two decisions in India (*Juggut Chunder Sein and another v. Kishwanund and others*,¹ and *Kissonnund Ashrom Dundy v. Nursingh Doss Byragee*²).

What is a
“properly
obtained”
decree ?

“Before, however, applying the principle of *res judicata* to judgments of this character, the Courts should take care to be satisfied that the decrees relied on are untainted by fraud or collusion, and that the necessary and proper issues were raised, tried, and decided in the suits

¹ 2 Select Reports, p. 126.

² 1 Marshall’s Reports, p. 485.

which led to them. The conditions appear to have been fulfilled in the present case."

18. "The concluding portion of the Privy Council's judgment seems to lay down the principle that the execution in such cases should be, not by sale of the *dewuttor* property, but by sequestration of the rents and profits of the idol's property in the hands of the *sebait*. The reasons for this course are not given in their Lordships' judgment, who simply say that "it is to be observed that execution of the judgments sought to be set aside is decreed, and in their Lordships' view *rightly*, only against the rents and profits of the *dewuttor* lands. Whether the judgments have been satisfied by the profits already received, or whether some provision ought to be made out of such profits, during the pendency of the attachments, for the continuance of the worship of the idols, are questions not raised in this appeal. The object of the present suit is to have the properties released from attachment on the ground that the decrees were obtained by fraud, and were in no way binding on the succeeding *sebait*s. In deciding against this claim their Lordships do not desire to prejudice the determination of the questions above adverted to, if they should be hereafter raised."

What is saleable in an idol's estate, in an execution of decree?

The property dedicated to gods being by its very nature inalienable under the Hindu Law, we are to take it that the Privy Council have on grounds of equity and natural justice extended the remedies of *bonâ fide* creditors to the extent of giving them an opportunity of realising their just dues without destroying the endowment altogether by a sale in execution. To that extent the idol enjoys a greater privilege than the minor by analogy to whose case the creditor is allowed to bind the idol's property. The dictum of the Privy Council is apparent authority to prevent a sale of the *dewuttor* pro-

An apparent authority preventing sale of *dewuttor* property.

party in execution of a mortgage-decree and *à fortiori* of a simple money-decree.

Another view
of the P. C.
judgment.

This view, however, of the judgment is opposed to the reservations made in the body of the judgment,¹ and viewed in this light the expression in the concluding part of the judgment that the execution had been *rightly* decreed "only against the rents and profits of the *dewuttor* lands," must be understood in the sense that, assuming the original decrees to have been rightly passed, the execution had been rightly ordered to proceed against only the rents and profits as directed in the said decrees.

Grant of *mokururee* lease
or sale of part
of the *mokururee*
rent by
sebait.

19. In the later case of *Kunwar Durganath Roy v. Ram Chunder Sen*, the Privy Council, having in a passage which I have cited in the course of this lecture,² found that there was no dedication of the disputed property to the idol, proceed to deal with the case upon the footing of a valid *dewuttor* and arrive at the conclusion that, under the particular circumstances, the *sebait*, if any, would have been justified in giving a *mokururee* lease, and also in selling a portion of the proprietary interest reserved to the idol under the *mokururee* lease :—

"Supposing the case had rested there, their Lordships

¹ The reservations referred to are to be found in the following passages of the above judgment :—

"The above two decrees are entitled to the force due to the judgments of competent Courts. The determination of the issues is *res judicata*, and their Lordships think that in the absence of proof of fraud and collusion, the High Court was right in holding that it could not re-open and review the judgment founded upon them. Nor need their Lordships now say whether the Judge in the first case was right in holding upon the evidence of title before him that

Rajah Baboo had no power to make a specific pledge of the *dewuttor* property, since they are not sitting in appeal to determine whether his conclusions of fact or of law are right or wrong. They can now properly deal only with the operation and effect of the decrees as they stand.

"It is to be observed that the question is not raised whether the lands themselves could be sold under the decrees." (My P. C. J., Vol. III, p. 450.)

² *Ante*, p. 139; My P. C. J., Vol. III, p. 695.

feel no doubt whatever that the judgment of the High Court was perfectly right. But it does not rest there, and it now becomes material to consider the terms of the *mourusi pottah* and of the bill of sale. Mr. Leith, in his reply, very properly relied on them as being strength of his case. If they are to be used as evidence only, then this evidence must be weighed with all the other evidence in the case, and so weighing it, their Lordships are not satisfied that it turns the scale in favour of this property being *dewuttor*. But the statement in these deeds are relied upon by plaintiffs as an admission which estops the parties to them from asserting that these lands were not *dewuttor*; but if the statements are relied on in this way, they must be taken as a whole; and so taking them it would appear that, granting the lands were *dewuttor*, the sale would be justifiable, the statement being that the sale was made for the purpose of the repair of the temple of the idol. The *mokururee* was granted, according to the statement, because the temple was out of repair, and money was wanted to restore it; the sale of part of the *mokururee* rent was granted in consideration of money stated to be required for the completion of the temple which it was stated was already in course of erection. If, therefore, the statements in these deeds are taken as a whole, the alienations they contain are justifiable, assuming this property to have been *dewuttor* land."

Justified when made for the repairs of the temple.

CHAPTER VI.

(Lecture VI.)

ON ALIENATIONS FOR RELIGIOUS PURPOSES.

EXCEPTIONS TO THE GENERAL RULES OF HINDU LAW IN CASE OF PIOUS

GIFTS: Not void though made by men, stricken with disease, &c.,

1.—Not invalidated by want of delivery to or non-acceptance by

donee, 2.—Not void though acceptance by deities impossible, 3.—

ALIENATION BY FATHER OR MANAGING MEMBER OF JOINT FAMILY;

In Mitakshara: assent of sons not necessary to gift by father of ancestral immoveable property, 4; *Gopal Chand Pande and Behary*

Lal Pande v. Babu Kunwar Singh, 5; Similarly sale for pious pur-

poses not necessarily void, though without assent of sons, *Madan-*

gopal Thakur v. Ram Bux Pandey, 6; *Raghunath Prosad v. Gobind*

Prosad, 7; What is the proper alienable portion of ancestral pro-

perty in *Mitakshara* family? The absolute dominion of father in

Dáyabhága, *Radhaballabh Tagore v. Gopes Mohan Tagore*, restric-

tions in case of joint property, 8.—ALIENATION BY WIDOW. (a)

Shastric authority: the sanction common to all schools, the general

prohibitory rule in *Dáyabhága* countermanded by other special

authorities, 9.—(b) DECISIONS, (i) limiting the extent of widow's

power to alienate, "moderate portion," *Mukhoda v. Kulhani*, 10;

"proportioned" to whole estate, *Ram Chunder Sharma v. Gunga-*

gobind Bunnhoorjiah, *ib.*; powers larger 'than those for purely

wordly purposes,' *The Collector of Masulipatam v. Cavally Venkata*

Narainappa, *ib.*; no specific limit, $\frac{1}{10}$ to $\frac{1}{10}$ allowable and $\frac{2}{10}$ too

much, *ib.*—(ii) decisions indicating the nature of the pious purposes

to constitute valid alienations by widows: spiritual benefit to husband

necessary—*Kartick Chunder Chukerbutty v. Gour Mohun Roy*, 11;

pilgrimage to Benares not a legal necessity, *Haromohan Adhikary*

v. Sreemutty Aulockmony Dasse, 12; nor the digging of a tank—

Ranjit Ramkoolal v. Mahomed Waris, *ib.*—(iii) Observations on the

decisions; what constitutes spiritual benefit to husband? 13.—(c)

bona fides of alienation: gift to widow's own relations, 14; a case of

gift by a childless widow to her brother, 15; the case discussed, the

point settled by *Bijoya Debi v. Annapoorna Debi*, 16.—Powers of

disposition allowed to a SUTTEE; the case of *Pandita Royaloo*, 17.—

The decision and Vyavastha criticised; the spiritual benefit by the suttee to her husband, 18.—The suttee's powers of disposition how intended, 19.

1. It is observed by Mayne¹ that "gifts for religious purposes are made by Kátyáyana an exception to the rule that gifts are void when made by a man afflicted with disease and the like." The full text of Kátyáyana, quoted in Jagannatha's Digest,² is translated as follows by Colebrooke :—

Exceptions in case of gifts for religious purposes.

"What a man has promised in health or in sickness, for a religious purpose, must be given; and if he die without giving it, his son shall doubtless be compelled to deliver it." No doubt the ordinary meaning is that ascribed by the translator and by Mayne, but Jagannatha in his commentary on the above text of Kátyáyana, after repeating the ordinary meaning, puts forward a different interpretation of his own³ :—

The text of Kátyáyana.

"But we thus expound it: the master of the family being gone to a foreign country, or deceased or the like, a debt contracted by his son, his servant or the like, and made known to him, must be paid by the chief of the family when he returns from that foreign country, or recovers from the disease. But if he die without paying it, the debt must be discharged by his son, or by the successor to the estate or other person liable to the payment of it; on failure of the first respectively, by the next in succession. 'For a religious purpose,' or from a religious motive; that is, with view to the strict observance of duty: the construction is, he must pay it, on that account; meaning, that otherwise duty is violated."

Jagannatha's commentary.

What is "a religious purpose"?

It would thus seem that the "religious purpose" is connected not with the promise but with the payment, that

¹ Hindu Law and Usage, p. 458, para. at 393.

² Book I, Chap. V, sec. 3, verse 195.

³ Colebrooke's Digest, Madras Reprint, Vol. I, pp. 206-207.

The true
meaning.

is to say, that the promised payment for secular purposes is to be made from a religious motive. But in a later part of the same Digest¹, Jagannatha comes back to the true interpretation. In introducing the subject of "subtraction of what has been given" the learned author quoting the text of Narada—

"In civil affairs, the law of gift is fourfold; what may or may not be given, and what is or is not a valid gift,"—

comments as follows² :—

Religious gifts
not void
though made
in disease.

"The rule to be established, that gifts made by a man afflicted with disease and the like are void, regards civil gifts, not donations for a religious purpose. This title of law does not extend to a gift made for a religious purpose: the donation is valid, if it be made by the owner *of the thing*." After this, he repeats the very same text of KATYAYANA quoted above, and remarks: "RAGHUNANDANA and other authors expound this text, 'what a man, even afflicted by sickness, has promised to give, must, if he die, be given by his son.' It is not proper to say, that what he has promised must necessarily be delivered, but the gift is not valid. The rule must be understood of other cases as well as of sickness; for the reason of the law is equally applicable."

Not invalidated by non-delivery to or non-acceptance by donee.

2. As a general rule, a gift is complete and irrevocable under Hindu law when the donee has obtained possession. An exception, however, is made in the case of gifts for pious purposes. This can be gathered from the text of Kátyáyana already discussed which compels the son to give over possession of the thing promised, but not given by the father, for religious purposes. A similar con-

¹ Book II, Chap. IV, sec. I, verses 2 & 3; Colebrooke's Digest, Vol. I, pp. 399-400.

² Colebrooke's Digest, Vol. I, p. 400.

clusion is derived by *Jagannatha* from the text of *Dhau-mya* quoted and commented on by him in his Digest, Book V, Chap. I, sec. 1, verse 2 (Madras Reprint, Vol. II, p. 190) :—

“*Dhaumya* :—On failure of the proper object, how shall a present be disposed of, which was bestowed on an absent person? Let it be delivered to kinsmen sprung from the same original stock, or, on failure of these, to his distant kindred.

“From this text, which enacts that a chattel given away, even though it has not been accepted, must be delivered to the kinsmen of the person intended, it appears that property is conferred by mere gift without acceptance, else, why should the kinsman of the person intended be alone mentioned? Consider the reverse as true; for, did property vest in the person intended through gift alone without acceptance, then it must of course be taken by a son or other heir, because it has become *a part* of the patrimony; and for what purpose has the text of *DHAU-MYA* been propounded? A present made for the benefit of a deceased *Bráhmāna* erroneously supposed to be living, must be delivered to his son or other heir: is not the text designed to convey this precept? What follows from this? For the argument supposes that property was vested before acceptance. Therefore should a present not be delivered to him for whom it was intended, the law shows the gift to be imperfect: hence it must be delivered to complete the gift. In answer to the question; ‘to whom should it be delivered if he died before or after the donation’? The text of *DHAUMYA* ordains, that it shall be delivered to the son or other heir, in like manner as donaries or the like given in honour of deities must be delivered to priests and the rest.”

Property
vesting before
acceptance.

Gift completed
by delivery to
donee's heirs.

* * * * *

the ancestral estate, for a pious purpose, without consent of sons.

Assent of sons not necessary for pious gifts of small portion.

Examples of pious gifts.

Sale for pious purposes also not necessarily void without assent of sons.

was valid or otherwise, according, as such essential, existed or not. According to texts of the Saint Nārada, cited in the Mitakshara and other works, a gift made, under the influence of fear, as a bribe, and in fourteen other categories, was void. The assent even of the sons could not legalize such gifts. On the other hand, according to the texts of Kātyāyana and another Saint (Vyāsa was meant), which are cited in the same books, the gift of a small portion of land, for the sake of piety, even without the assent of sons, was valid; and the King is enjoined, to compel a son, to surrender any inconsiderable property, which his deceased father (whether sound or sick) may have given or promised, for a spiritual object. The Pundit thus illustrated these pious gifts:—
 1st—A present for performing indispensable rites in honour of ancestors. 2nd, a present to priests officiating at sacrifices and the like. 3rd, pious and reverential gifts to Brahmans,—as Brahmutra, Krishnārpana, Padārgha,—in satisfaction of a vow,—as Vritti or aliment,—also gifts from affection towards Vishnu and other divinities. The Pundit declared his opinion to conform with the *Mitakshara*, *Viramitrodaya*, *Vyavahāra Mādhava*, *Vyavahāra Kaustubha*, works current in Shahabad.

This view of the law was accepted by the Judges of the Sudder Dewany Adalut, and in conformity therewith the plaintiff's suit was dismissed. This case has been followed by the Allahabad High Court in a case which I shall mention further on.¹

6. The passage above cited from the *Mitakshara*, authorising the father to alienate ancestral immoveable property for pious purposes was cited with approval by

¹ See sec. 7, p. 161.

the High Court in the case of *Muddun Gopal Thakur and others v. Rambuksh Pandey and others* (6 W. R., p. 71, see p. 72), and the proposition deduced therefrom that *Muddun Gopal Thakur v. Rambuksh Pandey* "the sale by a father of ancestral immoveable property without the concurrence of his sons is not necessarily void, though it may be avoided, unless the purchaser can shew that it was made during a season of distress for the sake of the family or for pious purposes."¹

7. In the case of *Raghunath Prasad v. Gobind Prasad* *Raghunath Prasad v. Gobind Prasad* (I. L. R., 8 All., p. 76), the father had transferred a house which was part of ancestral property to an idol represented by a trustee, without the consent of his adult son. The latter thereupon instituted the suit to cancel the deed of transfer on the ground that, under the Hindu law, the father was incompetent to make any disposition of the ancestral estate without the son's consent. The suit having been dismissed by the first Court, the son appealed to the District Judge pleading (1) the incompetency of the father so to deal with the ancestral property ; (2) the absence of any legal necessity for the alienation ; and (3) the father's bad faith in the transaction, the motive for the endowment being not piety to the gods, but malice to the son. The District Judge decided that the father had no power to alienate against his son's will ancestral estate, for providing a permanent shrine for the family idol, and that even if he had such power, for a small portion of the estate, the alienation was excessive in the particular case ; and upon these grounds he decreed the appeal and the suit. Upon appeal to the Allahabad High Court, the learned Judges remarked that "an examination of the authorities is sufficient to shew that a father is competent to deal with ancestral property, not only for the special *Pleas for setting aside father's gift to idol.* Father's competency upheld."

¹ 6 W. R., p. 73.

Gopal Chand Pande v. Babu Kunwar Singh followed.

The question of motive important,

Analogous power of managing member of joint family, under Mitakshara

or under Dayabhaga.

What is the proper portion alienable?

exigencies mentioned by the Judge, but also to make pious and reverential gifts to Brahmans, as *Brahmutra Krishnarpana*," also "gifts from affection to Vishnu and other divinities"—*Gopal Chand Pande v. Babu Kunwar Singh*.¹

The finding of the Judge on this point, therefore, cannot stand; and we are not informed on what materials he based his finding that the value of the estate is Rs. 4,000 only. The Judge has also omitted to decide the important plea as to the real motive underlying the gift—that is to say, the question of the good faith of the donor." The learned Judges, not having materials on the record to enable them to dispose of these questions, therefore referred the following issues for trial under sec. 566 of the Civil Procedure Code :—

"1. What is the value of the entire ancestral property of the parties to the suit?"

"2. Has the endowment been made *bonâ fide* for the satisfaction of the idol, and the benefit of the donor's soul, or from motives of spite against the plaintiff-respondent, as pleaded by him in his fifth plea before the Judge?"

3. It would seem therefore to follow from the authorities above cited that the father or other managing member in a Mitakshara family is competent to make an alienation of a *small* portion of the ancestral estate for pious purposes, without the consent or even against the will of the other adult members of the joint family. Apparently, the same rule will also be applicable in a Dayabhaga family consisting of co-parceners. As to what constitutes a *small* portion would always be a question of fact to be decided by the Court with reference to all the circumstances of the case. In the case in the 5th Select Reports,² a proportion of 755 to 100,000 was considered small and the gift

¹ S. D. A. L. P., 1843, Vol. 5, p. 24. See above, sec. 5, p. 159.

² See *supra*, § 5.

upheld. In the Allahabad case,¹ apparently, the High Court considered that the proportion of 693 to 4,000 would not be small and could not be sanctioned. The gift, however, even of the *proper* portion of the ancestral estate, should be one made from proper religious motives and not merely as a legal device for injuring co-sharers. In property where the donor has absolute dominion, as in the case of ancestral property, in the hands of a father governed by Dayabhaga law, the donor is competent to give away even the whole of his *own* property to the exclusion of his heirs for religious as for any other purposes, as was impliedly admitted in the case of *Radhaballabh Tagore v. Gopee Mohun Tagore*, mentioned in Sir Francis Macnaghten's *Considerations on Hindu Law*, p. 335. In the case of joint property there is ordinarily no absolute dominion, but a special discretion is vested in the managing member to alienate a portion of the joint property for *pious purposes*. The disposal, however, must be done in good faith, really with a view to acquire religious merit, and not merely out of a desire to injure other co-sharers.

Gift must be *bona fide* for religious purpose.

Father's absolute power in Dayabhaga.

Radhaballabh Tagore v. Gopee Mohun Tagore.

Discretion of managing member in alienation. Disposal must be *bona fide*.

9. It is remarked by Mayne² that in Western India grants for religious endowments have been held valid even when made by a widow, of land which descended to her from her husband, and to the prejudice of her husband's male heirs. The doctrine, however, is not confined to Western India, but is common to all schools of Hindu law. In Bengal for instance, side by side with the well understood rule that "the wife must only enjoy her husband's estate after his demise; she is not entitled to make a gift, sale or mortgage of it" (*Dayabhaga*, Chapter XI, sec. 1, *pāra*. at 56), there is authority for the widow to alienate such property in part for pious purposes. Thus Jagannatha in

Alienation by widows for pious purposes sanctioned by all schools.

In Bengal, widow's power limited to gifts only for husband's spiritual welfare.

¹ See *supra*, § 7.

² *Hindu Law and Usage*, para. 393.

Texts enjoining acts conducive to husband's spiritual benefit.

his Digest, Book V, Chapter VIII, verse 399, Madras Reprint, Vol. II, p. 526, says : "Raghunandana acknowledges that, for the purpose of raising her husband to a region of bliss, a wife may give away property left by him, and devolving on her by the failure of male issue. Hence it is understood that she ought not to do so for *any other purpose*. Vachespatis Bhattāchārya has delivered the same exposition. *Bhavadēva* also concurs nearly in the same opinion." The following texts also are quoted by Jagannatha in his Digest¹ as indicating the nature of the gifts, which the widow should practise for the spiritual welfare of her deceased husband.

"*Vyāsa* :—After the death of her husband, rigidly practising the austerities of a student in theology, the widow should, after bathing, daily present water to the *manes* of her husband from the hollow of both hands *joined*.

"2. Day after day let her perform with humility the worship of deities ; and, constantly fasting at *appointed times*, adore Vishnu.

"3. Let her give presents to the chief of priests, that *her* purity may be augmented ; and observe the forms of austerity prescribed by law.

"4. A woman ever assiduous in her duty, thus redeems both her husband abiding in another world, and herself, O.beauteous female !"

"*Smṛiti*, cited in *Dayabhaga Tatwa* and *Madanaparijata* :—Whatever is most desirable in this world, whatever most delighted her husband, that must be given to some virtuous man by a widow anxious to gratify her lord."

10. As regards judicial decisions, the Pundits of the Sudder Dewanny Adalat, who were consulted in the case

Decisions limiting the extent of widow's power.

¹ Colebrooke's Digest, Vol. II, p. 528 ; also quoted in the *Dayabhaga* Chap. XI, sec. 1, cl. 43.

of *Mukhoda v. Kulleani*,¹ declared that, according to the *Shastras*, "a gift by the widow of the whole estate of her husband is invalid ; but that a gift of a moderate portion of his property made by the widow, with a view to his spiritual benefit, may be valid." Similarly in the later case of *Ram Chunder Surma v. Gunga Gobind Bunhoojeah*,² the Pundits gave a *Vyavastha* to the effect that the widow was competent to "make a gift proportioned to the extent of her late husband's property for the benefit of his soul." In the well-known case of *The Collector of Masulipatam v. Cavelly Venkata Narainappa*, the Privy Council observe that "it is admitted on all hands that if there be collateral heirs of the husband, the widow cannot of her own will alien the property except for special purposes. For religious or charitable purposes, or those which are supposed to conduce to the spiritual welfare of her husband, she has a larger power of disposition than that which she possesses for purely worldly purposes." (8 Moore's Indian Appeals, p. 529.) Of course there is no specific proportion or limit laid down in the law up to which the alienation is justifiable. The Pundits in their *Vyavastha* in the case from the 4th Select Reports above mentioned, indicated their opinion that the widow might so alienate from one to three-sixteenth of her husband's property, and in that particular case the gift of nine-sixteenth of the property was declared illegal.

11. The whole object of the Hindu law in giving a qualified interest to the widow being that of securing the spiritual benefit of the deceased proprietor, certain decisions of the High Court have drawn a distinction between pious purposes in so far as they are or are not conducive to the spiritual benefit of the husband. Thus, in the case of

A moderate portion.

Proportioned to whole property.

Larger powers for religious and charitable purposes, &c.

No specific limit.

Decisions indicating nature of pious purposes to constitute valid alienations by widows.

¹ 1 Select Reports, p. 82.

² 4 Select Reports, p. 147.

*Kartick Chunder Chuckerbutty v. Gour Mohun Roy*¹ it was ruled that a Hindu widow cannot endow an idol with her husband's property or a portion thereof to the detriment of the reversioners.

The judgment of the High Court (Pundit and Campbell, JJ.) runs thus :—

*Kartick
Chunder
Chuckerbutty v.
Gour Mohun
Roy.*

Spiritual benefit to husband essential.

Endowing an idol held not conducive to husband's spiritual benefit.

“In this case the question is whether a widow can endow an idol with her husband's property, or a portion thereof, to the detriment of the reversioners. Appellant, claiming to hold the property as custodian of the idol, contends that such a dedication is for the benefit of the deceased husband's soul, and therefore valid under Hindu law. But we think that, even under the Hindu text-books (which being written by Brahmins, take the views most favourable to Brahmins and priests), he has failed to shew any sufficient authority for his contention. He refers us to Shama Churn's book, p. 61, where we find a question to this effect :—‘For the purpose of raising her husband to a region of bliss, a wife may give away property left by him.’ But in another passage, quoted in the main text of the same page, we find ‘great benefit is done to a departed soul by paying his debts, by bestowing his daughter in marriage, and supporting his family ; indeed if these duties be neglected, he is doomed to hell.’ Nothing is said of such a duty as endowing an idol ; from this we rather gather that the fulfilment of the moral and religious duties of the deceased are those by which he is to be raised to bliss, not a dedication by the widow of the nature of that under which the special appellant claims, which, under any circumstances, could only be supposed to conduce to the spiritual benefit of the widow herself (who made the gift without her husband's consent), and is accompanied

¹ 1 W. R., p. 48.

by a temporal benefit to the special appellant to which he is not entitled. We dismiss the appeal with costs."

12. In another case, *Huro Mohun Adhikari v. Srimutti Auluck Money Dossee* (1. W. R., p. 252), it was held that a pilgrimage to Benares by the widow was not a legal necessity which might justify the alienation by her of her husband's property. Lastly, it has been held in the case of *Ranjeetram Koolal v. Mahomed Waris*,¹ that the digging of a tank, although a meritorious act and a great convenience for the public, was not a legal necessity which could justify an alienation by the widow.

Pilgrimage to Benares not a legal necessity

nor the digging of a tank.

13. It seems to me that these decisions lay down the law rather too broadly by ignoring the distinction between

Remarks:

spiritual welfare and legal necessity for worldly purposes. The promotion of the spiritual welfare of the deceased is a desirable object, although it may not be a necessity like

Spiritual welfare should be distinguished from legal necessity.

the performance of the *sradh*, the non-performance of which entails torments on the departed. If the religious act performed by the widow conduces to the spiritual benefit of the husband, I venture to think that within proper limits the widow might alienate the husband's property. The case of *Kartick Chunder Chuckerbutty*

Hindu widow cannot act solely to her own benefit.

(1 W. R., p. 48) assumes that there are certain acts of which the religious merit is solely acquired by the widow, and starting from such premises the learned Judges rightly conclude that an alienation could not be justified for such religious purposes, as for example the dedication of the idol in that case. It seems to me, however, that, under the Hindu conception, it is difficult to say that the widow can perform any religious act with sole benefit to herself, excluding the soul of her deceased husband from partici-

Authorities for holding participation from deceased husband.

¹ 21 W. R., p. 47.

Vrihaspati.

pation therein. According to the text of Vrihaspati, cited in the Dayabhaga, Chap. XI, sec. 1, "in scripture and in the code of law, as well as in popular practice, a wife is declared by the wise to be half the body of her husband, *equally sharing the fruit of pure and impure acts*. Of him, whose wife is not deceased, half the body survives." This text in itself is authority for holding that the husband and wife participate in the effects of good and evil actions, and that this partnership is not dissolved by the death of either partner. The widow is half the body, and the whole body shares in the results of the acts performed by the mundane half. This meaning is very clear from another passage in the same treatise.¹

Vyāsa.

"But, on failure of heirs down to the son's grandson, the wife, being inferior in pretensions to sons and the rest, because she performs acts spiritually beneficial to her husband from the date of her widowhood² [and not, like them, from the moment of their birth,] succeeds to the estate in their default. Thus Vyasa says: 'After the death of her husband, let a virtuous woman observe strictly the duty of continence; and let her daily, after the purification of the bath, present water from the joined palms of her hands to the manes of her husband. Let her day by day perform with devotion the worship of the gods, and specially the adoration of VISHNU, practising constant abstemiousness. She should give alms to the chief of the venerable for increase of holiness, and keep the various fasts which are commanded by sacred ordinances. A woman who is assiduous in the performance of duties, conveys her husband, though abiding in another world, and herself [to a region of bliss].'³

¹ Dayabhaga, Chap. XI, sec. 1, cls. 43 & 44.

² Chūdāmanī, S'rī'crishn'a and Mahe's'wara.

³ S'rī'crishn'a.

“Since by these and other passages it is declared that the wife rescues her husband from hell; and since a woman, doing improper acts through indigence, causes her husband to fall [to a region of horror]; for they share the fruits of virtue and of vice; therefore the wealth devolving on her is for the benefit of the former owner: and the wife’s succession is consequently proper.”

The above afford very clear authority for holding that the soul of the deceased husband participates in the religious merit of actions performed by the widow, and consequently there is no ground for drawing a distinction between acts which are productive of religious merit to the widow solely and those which benefit the soul of her husband.

14. The alienation, however, must be in good faith for pious purposes and not for injuring the reversioners under the cloak of religion. There is always a natural tendency in the case of childless widows, who alone can succeed to their husband’s property, to aggrandise their paternal relations at the expense of their husband’s relations. The *Shastras* have aimed at counteracting this tendency by specially inculcating upon *her* the duty of assisting her *husband’s* relations. Thus Vrihaspati, quoted in the *Dayabhaga*, Chap. XI, sec. 1, cl. 2, specially recommends the bestowal of gifts to the *husband’s* relations and the like, and in cl. 63 of the same chapter and section the text of Vrihaspati is again quoted with very significant comments :—

“Let her give to the paternal uncles and other relatives of her husband, presents in proportion to the wealth, at her husband’s funeral rites. Vrihaspati directs it, saying, ‘With presents offered to his manes, and by pious liberality, let her honour the paternal uncles of her husband, his spiritual parents and daughter’s sons, the

A groundless distinction.

Bona fides of alienation.

Gifts by childless widows.

Should be to her husband’s relations

children of his sister, his maternal uncles, and also ancient and unprotected persons, guests, and females of the family.' The term 'paternal uncle' intends any *sapinda* of her husband; 'daughter's son's, the descendants of her husband's daughter; 'children of his sister,' the progeny of her husband's sister's son; 'maternal uncles,' her husband's mother's family. To these and to the rest, let her give presents, and not to the family of her own father, while such persons are forthcoming: for the specific mention of paternal uncles and the rest would be superfluous."

and not to the family of her own father.

A case of gift by widow to her own brother.

15. In an early case a childless Brahmin widow, having succeeded to her husband's estate, made a gift of a certain portion of the lands to her own brother, notwithstanding the existence of her husband's brother's sons, alleging in the deed of gift that the land was bestowed for the spiritual benefit of her husband. Upon a reference to the Pundits the following *Vyavastha* was given:—

Vyavastha.

"R. It does not appear from the question what quantity of the land was given; but the gift of a small part only of the estate, for the spiritual welfare of her deceased husband, is legal; because although it is laid down in the *Dayabhaga* and other books of law, that the widow of a deceased man who left no male issue, may only enjoy his property until her death, she is entitled to make a gift of small part of it for the benefit of her husband, which if she do, the gift should be upheld as legal."

Doubts as to the *bona fides* of the above gift.

16. It will be observed that the *Vyavastha* does not at all deal with the question of the donee being the widow's own brother and the great doubt thereby created as to the good faith of the transaction. Looking to the positive injunctions in the *Dayabhaga* that the widow should bestow gifts on her husband's relations and not on her own relations, I think it would be safer to test such cases by the standard of good faith and to refuse their validity if

it should be found that the real motive for the gift was rather an affection for the widow's own relations than a desire to benefit the soul of her husband. The case of *Mussummat Bijoya Debee v. Mussummat Annapurna Debee*, reported in 1 Select Reports, p. 215, would furnish some authority for such a course. There a widow made a gift of her husband's estate to her own daughter's son to the prejudice of other heirs, and an attempt was made to justify the alienation on the ground of its being "a charitable donation by the widow, beneficial to the soul of her husband." This attempt met with deserved failure, and the alienation was declared to be not binding on the husband's heirs.

The point settled by *Mt. Bijoya Debee v. Mt. Annapurna Debee*.

17. Connected with the question of a childless Hindu widow's powers of disposition for charitable purposes, over property inherited from her husband, is the question of the powers of disposition of a widow about to become a *Sati*. In the second volume of Strange's Hindu Law, there is a case¹ reported which, truly read, throws some light on this point, although its significance in that respect was apparently overlooked at the time by the European authorities concerned. It appears that one Pundita Royaloo having died possessed of some self-acquired lands, and having no male issue, the inheritance devolved upon his widow. She, however, ascended the funeral pile with him, but before doing so she divided her husband's estate into four parts, giving one part to her husband's brother's son, two parts to her husband's sister's sons and the remainder to Brahmins. The widow was apparently dissatisfied with her husband's brother's son, and charged against him that his father, *i.e.*, her husband's brother, had been degraded from caste, and she seems to have

The case of *Pundita Royaloo*.

¹ Strange's Hindu Law, Vol. II, p. 409.

been more favourably disposed towards her husband's sister's sons, her obsequies being performed by them at her desire. The degradation from caste, however, was not proved in the subsequent litigation, and may therefore be eliminated from the consideration of the legal problem concerned. The case then stood simply thus, that the widow under the above circumstances had given one-fourth of her husband's estate to the immediate reversionary heir of her husband, one-half to her husband's sister's sons, and the remaining one-fourth to Brahmins. The brother's son was dissatisfied with this disposition and brought a suit to set aside the gift by the widow to the sister's sons, as one in excess of her authority. The plaintiff Mallaya having apparently succeeded in the first Court, the sister's sons appealed to the Masulipatam Provincial Court, where the question was proposed to the Pundit, how far the widow had a right, by the Hindu law, so to dispose of the land left by her husband, or whether it became the property of his brother's son the plaintiff respondent? The answer given was that "the wife of Pundita Royaloo had sufficient authority to give away the land left by her husband." Colebrooke and Ellis, in commenting upon this *Vyavastha*, dissent from its correctness, in the following terms :

Dissents of
Colebrooke
and Ellis from
the *Vyavastha*.

Colebrooke :—

"It is maintained in the *Madhavya*, that no widow can give away immoveable property, coming to her from her husband, without consent of the next heirs. This seems to be the correct doctrine. Pundita had doubtless power to give away his lands ; but what he did not give away, may, and should, pass in succession."

Ellis :—

"The widow had no right to make the gift in question. She had a right to use the property for charitable pur-

poses ; but the law limits even these to what may be consistent with her circumstances and conditions in life."

18. Colebrooke no doubt is correct in stating the general proposition that a widow cannot give away the immoveable property of her husband without the consent of the next heirs, but he overlooks the special powers of alienation possessed by her for religious and charitable purposes. The husband's sister's son (*bhartuh svastriya*) is specially enumerated as a fit recipient for the widow's liberality in the text of *Vrihaspati*, quoted in Dayabhaga, Chap. XI, sec. 1, cls. 2 and 63, and the same text is quoted in the *Viramitrodaya*¹ (Chap. III, Part 1, sec. 2) as a text of Prajapati. Ellis, indeed, had this in mind, but he objects to the *Vyavastha* on the ground that the independent power to give away property for charitable purposes is a limited power having regard to her circumstances in life. There is no doubt that this is true in the general sense, and in any ordinary case a gift by the widow of one-half of the husband's estate for religious or charitable purposes would be considered excessive. It seems to me, however, that the *Vyavastha* is correct in view of the special privileges conferred upon an intending *Sati*. The spiritual benefits conferred by such a widow upon her husband are immense and innumerable. Great spiritual benefits conferred to husband by *Sati*.

"*Angiras*² :—That woman who, on the death of her husband, ascends the same burning pile with him, is exalted to heaven, as equal in virtue to Arundhati. Angiras.

"2. She who follows her husband to another world, shall dwell in a region of joy for so many years as there are hairs on the human body, or thirty-five millions.

¹ Golap Chandra Sastri's translation, p. 134.

p. 153 and p. 155 ; also quoted in Raghunandan's *Suddhi-tattvam*, Mathuranath's Ed., pp. 4-5.

² Colebrooke's Digest, Vol. II,

"3. As a serpent-catcher forcibly draws a snake from his hole, thus drawing her lord from a region of torment, she enjoys delight together with him.

"4. The woman who follows her husband to the pile, expiates the sins of three generations, on the paternal and maternal side, of that family to which she was given while a virgin.

"5. There, having the best of husbands, herself best of women, enjoying the best delights, she partakes of bliss with her husband in a celestial abode, as long as fourteen Indras reign.

"6. Even though the man had slain a priest, or returned evil for good, or killed an intimate friend, the woman expiates those crimes: this has been declared by Angiras.

"7. No other effectual duty is known for virtuous women, at any time after the death of their lords, except casting themselves into the same fire.

"8. As long as a woman, in her successive transmigrations, shall decline burning herself, like a faithful wife, on the same fire with her deceased lord, so long shall she be not exempted from springing again to life in the body of some female animal.

"9. When their lords have departed at the fated time of attaining heaven, no other way but entering the same fire is known for women whose virtuous conduct and whose thoughts have been devoted to their husbands, and who fear the dangers of separation."

Vyasa. "Vyāsa¹:—Learn the power of that widow, who, hearing that her husband has deceased, and been burned in another region, speedily casts herself into the fire.

¹ Alluded to in Raghunandana's *Suddhitattvam*.

"2. Though he have sunk to a region of torment, be restrained in dreadful bonds, have reached the place of anguish, be seized by the imps of Yama,

"3. Be exhausted of strength, and afflicted and tortured for his crimes; still, as a serpent-catcher unerringly drags a serpent from his hole,

"4. So does she draw her husband from hell, and ascend to heaven by the power of devotion. There, with best of husbands, lauded by the choirs of Apsaras,

"5. She sports with her husband as long as fourteen Indras reign."

The *Sancalpa*¹ for the widow desiring to immolate herself on the funeral pyre of her husband, is evidently framed on the basis of the above text of *Angiras* :—

The *Sancalpa*
of *Sati*.

"On this month, so named in such a *pacsha*, on such a *tithi*, I (naming herself and her family²) that I may meet ARUNDHATI³ and reside in *Swarga*; that the years of my stay may be numerous as the hairs on the human body; that I may enjoy with my husband the felicity of heaven, and sanctify my paternal and maternal progenitors, and the ancestry of my husband's father; that lauded by the *Apsarases*, I may be happy with my lord, through the reigns of fourteen *Indras*; that expiation be made for my husband's offences, whether he has killed a *Bráhmāna*, broken the ties of gratitude, or murdered his friend, thus I ascend my husband's burning pile. I call on you, ye guardians of the eight regions of the world: Sun and Moon! Air, Fire, Æther,⁴ Earth and Water! My own

¹ Colebrooke's Essays, Vol. I, p. 115; Raghunandan's *Suddhitattvam*, p. 28.

² Gotra the family or race. Four great families of *Bráhmānas* are now extant, and have branched into many distinct races. Since

the memorable massacre of the *Cshatriyās*, by *Parásu-Rama*, the *Cshatriyās* describe themselves from the same *Gotras* as the *Bráhmānas*.

* Wife of *Vasishtha*.

* *Acása*.

Soul! YAMA! Day, Night, and Twilight! And thou, Conscience, bear witness: I follow my husband's corpse on the funeral pile.¹"

Expiation of husband's sins by *Sati*.

"The chief characteristic of *Satism*," remarks Tod,² is its *expiating quality*: for by this act of faith, the *Sati* not only makes atonement for the sins of her husband, and secures the remission of her own, but has the joyful assurance of reunion to the object whose beautitude she procures."

The *Sati*'s powers of disposition

extended by practice, if not precept.

19. Colebrooke in his Essay on the duty of a faithful Hindu widow³ quotes from a ritual the direction that the widow about to immolate herself should make a present of her jewels to the Brahmins. These no doubt are her *stridhan* property which she could always dispose of at her own will and pleasure. But practice, if not precept, seems to have extended her powers of disposition. A widow, practising the rite of *Sati*, was looked upon as the incarnation of the great *Sati*⁴ Parvati, who renounced her life rather than tolerate an indignity upon her husband. Such women had supernatural powers ascribed to them, their utterances were revered as prophecies,⁵ and naturally it would be considered as some sort of sacrilege if anything out of her husband's estates which she had chosen to give away to a fit recipient should be sought to be resumed. In Steele's valuable compilation of the customs of Hindu castes, it is stated that "a widow becoming a *Sati*, without children, may give away all her husband's property,"⁶ and in another place it is even more broadly stated that "a widow about to become a *Sati* is entitled to give away all her husband's property."⁷

¹ In several publications the woman has been described as placing herself on the pile before it be lighted; but the ritual quoted is conformable to the text of the *Bhāgavata*.

² Annals of Rajasthan, Vol. I,

p. 668.

³ Vol. I, p. 122.

⁴ *Vide* Tod's Rajasthan, Vol. I, p. 668.

⁵ Tod's Rajasthan, Vol. II, p. 132.

⁶ p. 232.

⁷ p. 174.

CHAPTER VII.

(Lecture VII.)

ON PROPERTY DEDICATED FOR, OR SUBJECT TO, PIOUS USES.

PROPERTY WHOLLY DEDICATED : the origin of the principle of impartibility, 1.—*Decisions : Elder widow of Raja Chutter Sein v. Younger widow of Raja Chutter Sein*, 2; *Rajender Dutt v. Sham Chand Miller*, 3.—**PRIVATE PROPERTY PARTLY SUBJECT TO PIOUS USES :** alienable and partible, 4.—*Decisions : a property not wholly dedicated, partible subject to the trust, —Sonatun Bysack v. Sreemutty Juggut Soondres Dosses*, 5; property not wholly endowed, alienable subject to the trust,—*Futtoo Bibi v. Bhurru Lal Bhukut*, 6; *Basoo Dhul v. Kishen Chunder Geer Gossain*, 7; joint property, not actually dedicated to an idol, but held subject to a trust in its favour, partible,—*Ram Coomar Paul v. Jogender Nath Paul*, 8.—Property, not wholly debutter, is subject to the law against perpetuities and liable to be attached and sold in execution; *Ashutosh Dutt v. Doorga Churn Chatterjee*, 9.

1. Property dedicated for pious uses has been made impartible under the Hindu law, as much, I believe, from the fundamental idea of its not being private property as from a desire to maintain the uninterrupted use of the same for the pious purposes. Gautama in his Institutes (XXVIII, 46)¹ declares that "property destined for pious uses or sacrifices" shall not be divided. Catyayana in a text quoted in the Digest² (Book V, Chap. V, Sec. 2, v. 365) enumerates "property which has been appropriated to religious uses" amongst the impartible things. A text of Vyása, quoted in Dayabhaga, Chap. VI, Sec. 2, cl. 25,

Property
wholly dedi-
cated.

Authorities on
impartibility.

¹ Sacred Books of the East, Vol. II, p. 306. (Also Sup. 48 of MSS., Chap. II).

² Colebrooke's Digest, Vol. II, p. 471.

Yajyam.

declares *यज्ञं* as one of the things not liable to partition. Jimutavahana explains *यज्ञं* to mean *यज्ञस्थानं देवता वा* either a place where sacrifices are performed, *i.e.*, the *Yajna-sālā* or hall of sacrifice of ancient times, or else an idol. The text is also quoted by Jagannatha in his Digest, Book V, Chap. V, Sec. 2, v. 364,¹ where the same interpretation is followed. The same text is quoted in the *Mitakshara*, Chap. I, Sec. 4, cl. 26, as a text of *Usanas*, and in cl. 27. Vijñanashwara interprets the word *यज्ञं* as *यज्ञफलं* sacrificial gains acquired by officiating at religious ceremonies. A similar conflict exists as to the true interpretation of the words *बीजं चैव प्रचारं* in Menu, IX, 219, in the enumeration of impartible things. Jimutavahana quotes this text as of Menu and Vishnu in Dayabhaga, Chap. VI, Sec. 2, cl. 23, and in cl. 24, interprets those words to mean

Yoga-kshema-prachāram,

ब्रह्मचर्यभोजनार्थं वाद्यपयस्त्रयभोजनार्थं च “furniture for repose or for meals—beds, and vessels used for eating and sipping (or drinking) and similar purposes”—in which sense that sloka would have nothing to do with our subject. Another interpretation favoured by the *Ratnacara* and *Kulluka Bhatta* makes the words mean “family priests or spiritual counsellors and the road by which cattle pass,”² which is

as explained in
Mitakshara.

equally irrelevant for our present purposes. The meaning with which we are concerned is given in *Mitakshara*, Chap. I, Sec. 4, cl. 23, and the same texts are quoted and the interpretation repeated in the *Vira Mitrodaya*, Chap. VII, Sec. 2. I will read from Babu Golap Chandra Sirkar’s translation of the latter work (p. 249) which seems to be more accurate than Colebrooke’s translation of the corresponding passage in the *Mitakshara* :—

Yoga-kshemam.

“Other kinds of property not liable to partition are mentioned by Manu thus : ‘clothes, vehicles, ornaments,

¹ Colebrooke’s Digest, Vol. II, p. 470.² Digest, Vol. II, p. 470, and Kulluka’s Commentary.

prepared food, water, women, religious fund and charitable works (*yoga-kshemam*), as well as a passage are declared to be not liable to partition.'

"The term 'religious fund' (*yoga*) means a fund for the performance of religious ceremonies; and 'charitable work' (*kshemam*) signifies a reservoir of water, or the like, constructed for public benefit. The impartibility of these two, though raised or made at the charge of the paternal property, are set forth as examples: since, directly or indirectly, a partition of these is not possible, far less when these are hereditary. Accordingly, Langákshi declares,—'The sages declare that charitable work is a reservoir of water or the like constructed for public good, and that religious fund is property set apart for the performance of religious rites: these two are pronounced impartible: so are the bed and the seat.' Some hold, that the term *yoga-kshema* intend those who perform sacrifices and charitable works, as the king's minister (of charitable works), the (family) priest, and the like. Others say that it signifies weapons, cow-tails, shoes and similar things.

"A passage' is a way for ingress and egress to *Prachāram*. and from a house, garden or the like; this also is impartible."

2. In the early case of *the Elder widow of Raja Chutter Sein v. the Younger widow of Raja Chutter Sein* *Dewuttor lands dedicated to two idols may be separated;* (1 Select Rep. old ed., p. 180) it was decided by the Sudder Dewanny Adawlut of Calcutta, acting on the Vyavastha of their Pundits, that although *dewuttor* lands were not hereditary property, but only the management of them for religious purposes was hereditary, where lands had been endowed to two idols, it was lawful for the heirs of the original founder to form distinct establishments by mutual consent, and after such division, one heir could not claim to participate in another's affairs. *though impartible ordinarily.* The above case assumes

the position that ordinarily *dewuttar* property is not partible amongst those interested in the worship.

*Rajender Dutt
v. Sham Chand
Mitter.*

3. In the case of *Rajender Dutt v. Sham Chand Mitter*¹ the family dwelling-house had been absolutely and validly given to the idol, the donor's sons being appointed managers, a suit by one of the heirs for the partition of the said house was dismissed.

Property not
wholly dedi-
cated.

4. The cases which we have hitherto considered are those of the complete transfer of property from the original proprietor to an idol : other endowment cases, however, occur where the property is not absolutely given, but only a charge created thereupon for specified purposes. In such cases the property is both alienable and partible subject to the trust.

*Sonatun Bysack
v. Sreemutty
Juggut Soondree
Dossee.*

5. The leading case upon this point is that of *Sonatun Bysack v. Sreemutty Juggut Soondree Dossee*, 8 Moore's Indian Appeals, p. 66.

Provisions of
the Will.

The facts of the case were : that Ramdoss Bysack, a Hindoo, by Will, gave all his moveable and immoveable property to his family idol, *Sree Sreejutt Esshore Muddun Mohun Thakoor* which he had "established in the house and of which he" was "the *malik* or proprietor." After stating in his Will that he had four sons, he directed that his property should never be divided by them, their sons, or grandsons in succession, but they should enjoy "the surplus only." The Will also empowered the testator's eldest son, that he shall "as a servant of the *Esshore Thakoor* control over and manage the entire estate," and attend to the festivals and ceremonies of the idol, and maintain the family. The Will further directed that whatever might be the surplus, after deducting the whole of the expenditure the sum should be added to the corpus, and in the event of a disagreement

¹ I. L. R. 6 Cal., p. 118.

between the sons and the family, the testator directed that, after the expenses attending the estate, the idol, and the maintenance of the members of the family, whatever net produce and surplus there might be, should be divided annually in certain proportions among the members of the family. The managership was to devolve on the death of the eldest son, upon the oldest in age of the surviving heirs; and inheritance was restricted to male issues only.

At the date of the Will, the family were joint in estate, food, and worship. The accumulations of the income were divided as directed by the Will. State of property

One of the four sons of the testator died, leaving three sons, one of whom *Hurymohan*, also died without a issue, leaving a widow. The family had remained undivided in estate, food and worship up to the death of *Hurymohan*. His widow sued for a life interest in her husband's share of the property, and for a suitable maintenance if it was held that her husband's interest in the property had terminated on his death. She contended that the disposal of the testator's moveable and immoveable property to the idol was void, and that the restriction upon alienation was also void, as tending to create a perpetuity; and lastly, "that having regard to the whole of the Will, the trust, if any, in favour of the idol, could only be construed as a trust to the extent of what is sufficient to keep up the worship of the idol in a proper and becoming manner, having regard to the position of the testator's family." She therefore prayed for a partition of the estate and also for an account of what amount of property was required to be set aside and appropriated for the due performance of the worship of the idol. Suit by widow.
Her contentions.
Seeking partition and apportionment of property for idol's service.

On appeal from the decretal order of the Supreme Court, the Privy Council by their judgment held that "although the Will purports to begin with an absolute gift Privy Council judgment.

Dedication not absolute. in favour of the idol, it is plain, that the testator contemplated that there was to be some distribution of the property according as events might turn out." From the directions in the Will as to the accumulation of the surplus from the testator's provision "for whatever surplus should remain out of the interest of the property, the expenses of the idol being first deducted," and from "looking at the expenses of the idol, it was plain to their Lordships that *the bequest to the idol was not an absolute gift.*

Gift to sons subject to charge of idol's service. The judgment also declared that the bequest was "to be construed as a gift to the testator's four sons and their offsprings in the male line, as a joint family, so long as the family remained joint, and that the four sons were entitled to the surplus of the property, after providing for the performance of the ceremonies and festivals of the idol, and the provisions in the Will for maintenance ;" and it was further said in this connection that the extent of the testamentary power of the Hindoos must be regulated by the Hindoo law.

Testamentary power of Hindoos. It was also declared that the fact of the division of the income arising out of the testator's estate among the members of the family after the testator's death did not constitute a division of the family.

Family undivided. By a true construction of the Will, by considering the family as a joint and undivided family, and the testator having intended that the property should pass from his four sons to their sons and to their grandsons, their Lordships arrived to the conclusion that *Hurymohan* came into his share on the death of his father. "It is a share of the property of the joint family, descendible, therefore to the heir to whom that property would go in the absence of any provision made in the Will." The consequence was, this share descended to his heir, his

Shares heritable and descendible.

widow, so far as she was entitled to her widow's estate: In this case, she was entitled to a third share of a fourth part of the property and accumulation, without prejudice to her rights as a Hindoo widow "when the joint family shall be separated." It will thus be seen that, in the opinion of the Privy Council, such a property was partible, subject to the trust. Conclusion.

6. In the case of *Futtoo Bibi v. Bhurrit Lal Bhukut*,¹ the property in question was some land subject to the trust of keeping up a *peer's* tomb. It did not appear that the whole of the profits arising from it was devoted to religious purposes. It was not therefore an absolute *waqf*. It rather appeared to be a heritable estate burdened with the abovementioned trust. Therefore, following some decisions of the Sudder Dewanny Adawlut,² it was held that this land being a heritable property burdened with a trust, it may be alienated subject to the trust. *Futtoo Bibi v. Bhurrit Lal Bhukut.* Property not wholly *wakf*. Alienable subject to the trust.

7. The decision in the last mentioned case and the decisions of the Sudder Dewanny Adawlut, referred to above, were followed also in the case of *Basoo Dhul v. Kishen Chunder Geer Gossain*.³ In this case, the plaintiff, Kishen Chunder, sued to set aside the sale of some lands by his spiritual father, Bhoobunessur Gossain, on the ground that they were dedicated for the food of the idol Jugger-nath and for other religious purposes, and that the sale of them under such circumstances was illegal. *Basoo Dhul v. Kishen Chunder Geer Gossain.*

The defence was that the sale was not illegal; for, the property so sold was not wholly endowed for religious purposes. The evidence showed that the whole of the profits derivable from the property were not dedicated for religious purposes. A certain sum of money was charged on the land annually for a certain religious purpose, but *Property wholly endowed.*

¹ 10 W. R., p. 299.

² S. D. A. Reports of 1858, pp. 586, 1028 and 1218.

³ 13 W. R., p. 200.

the remainder of the profits was left in the hands of the Gossain to be employed either for his own purposes or for charitable purposes, as he should consider fit.

Held, alienable
subject to the
charge.

Jackson, J., in holding that the sale was good, made the following observations: "The distinction as regards the power to sell such property seems to turn upon the point whether the property is wholly dedicated to religious purposes, or whether a certain portion of its profits only are charged for such purposes. The precedents quoted from Marshall's Reports, p. 303,¹ and the Weekly Reporter, Vol. X, 299, and the cases from the late Sudder Dewanny Adawlut Reports mentioned in the last of the three decisions, distinctly lay down the ruling that, *although a certain property is burdened with the payment of a certain charge, it does not follow* that the property cannot be sold. The sale of such property is subject to the charge or lien which was originally imposed upon it. The decisions which are quoted on the other side are cases where the whole of the property has been endowed and not only a portion of it."

*Ram Coomar
Paul v.
Jugender Nath
Paul.*

8. Another case of this class is that of *Ram Coomar Paul v. Jugender Nath Paul*.² In this case the suit was brought for a partition. "The plaint stated that the common ancestor of the plaintiff and the defendant and his five sons acquired certain properties; that, on the death of the ancestor, his five sons separated among themselves, and each took a certain share (16 bighas) of lands for his own expenses, and the remaining portion of the lands they held in *ijmalee* among themselves; that one of them became the manager of this portion of the lands, made the collection of the rents, and from the profits thereof paid the expenses of the *Rash*, *Dole*, etc., festivals and the

Ijmalee property subject
to idol's
service.

¹ *Jadubindu Odhikares v. Lokenath Giree & others.*

² I. L. R., 4 Cal., p. 56.

worship of the *Debta*,—all of which are patrimonial ; and that the balance of the money they divided among themselves. The defence substantially was, that the whole of the *ijmalee* land was the property of the idol. It was found in the lower Court that a certain portion of the land (94 bighas and 6 cottahs) was *dewuttor* and not partible, and a decree was made for a partition of the remainder.”

Contention that property belonged to idol.

The High Court, on appeal, held that it was not shewn that this latter portion of the property had been transferred from the family and dedicated to the idol. The case was remanded to the lower Court for the determination of this point, and it was directed that “if they (*i.e.*, the lands other than the *dewuttor* land 94 bighas and 6 cottahs and the *bhatee* land 80 bighas) were dedicated to the idol and ceased to be the property of the family, except otherwise than as representing the idol, then these lands are not partible. On the other hand, if he finds that they remained as the property of the several members of the family subject to a trust in favour of the idol, and that only the profits of these lands were dedicated to the worship of the idol and the surplus-proceeds were distributed among the members themselves, then the decree (for partition) will stand.”

Dedication not proved.

Question of impartibility dependent on proof of dedication.

Markby, J., in the course of delivering the judgment in this case, observed : “The case is somewhat like the case of *Sonatun Bysack*.¹ There the Will begins with this statement that the property was given to the idol ; but nevertheless, relying mainly upon a subsequent clause in the Will, by which it was declared that the members of the family of the testator should have an interest in the surplus, the Privy Council came to the conclusion that the

Remarks by *Markby, J.*

¹ 8 Moore's I. A., 66.

Question of
intention.

Partition
proper where
no actual
transfer to
idol.

Reference to
*Radha Mohan
Mundul v.
Jadomonee
Dasee.*

*Ashutosh Dutt
v. Doorga
Churn
Chatterjee.*

property remained in the family and was not transferred to the idol, and that it was only subject to a trust in favour of the idol. It is argued here, and we think correctly, that all these cases must depend upon the intention of the parties. Nevertheless, this judgment of the Privy Council is a guide to us as to what our decision ought to be in this case; and it seems to me clearly to indicate that we should be going considerably beyond what the plaintiff states in the plaint, if we were to say that it contains an admission that this land is the property of the idol. I also think it clear upon the decisions that, unless the property is transferred from the family and dedicated to the idol, the partition ought to take place. There may be some inconvenience in carrying on the worship of the idol, should the property be partitioned; but nevertheless partition is an incident of property in this country, and if the property is the property of the several members of the family and has not been actually dedicated to the idol, I think that the authorities show that the several members have a right to partition. A strong case in favour of the right to partition is that of *Radha Mohan Mundul v. Jadomonee Dasee*¹, where the claimant of a share admitted that the property was in a sense *dewuttor* property. She claimed, nevertheless, that as *sebait* she had a right to a separate share of the *dewuttor* property. Here the property could scarcely be called *dewuttor* property at all. It is, as in the case of *Sonatun Bysack*,² the private property of the family, subject only to a trust in favour of the idol. Therefore, upon the fact as found by the lower Court below, I think that the decree for a partition was right."

9. One more important case of this class is the Privy Council case of *Ashutosh Dutt v. Doorga Churn Chatter-*

¹ 23 W. R., 369.

² 8 Moore's I. A., p. 66.

jee.¹ The facts of the case are that Saraswati Debi, a Hindoo lady, left by Will to her three sons (Doorga Churn, Shama Churn, and Bhogobuti Churn) a *taluk* belonging to her to support the daily worship of an idol (*Eshore Thakoor Raj Rajeshwar*), and to defray the expenses of certain other religious ceremonies (as the *parbans* of *Dole Jattrra, Rash Jattrra, &c.*), with a provision that, in the event of there being a surplus after these uses had been satisfied out of the revenue of the said lands, such surplus should be applied to the support of the family. At the same time the Will also directed that "beyond performing the aforesaid worship of the *Deb*, and the ceremonies and *poojas*, none of my heirs shall have any interest in or profit from my property. And they will have no power of gift or sale over it. And it will not be attached or sold on account of their debts."

Taluk bequeathed to idol's service, with beneficial interest to family.

Directions in Will prohibiting gift or sale, &c.

The appellant, Ashutosh Dutt, obtained a money-decree against Doorga Churn Chatterjee, the respondent, and in execution attached one-third share of the above *taluk*. Thereupon Doorga Churn and his brother Shama Churn intervened, alleging the *dewuttor* character of property under the abovementioned Will, and contended its liability to be sold for the private debts of Doorga Churn.

Attachment for money-decree.

Judgment-debtor's contention.

The decree-holder contended that the Will was not genuine, and even if genuine that the alleged endowment of the idol was a mere device, whereby Saraswati intended to secure the *taluk* in question to her sons clear of liability for their debts, and was invalid as contrary to the law against perpetuities. And it was also contended that Doorga Churn had a considerable beneficial interest in the property.

Judgment-creditor's contentions.

Both the lower Court and the High Court held that the Will was genuine and *bonâ fide*, and that the property was

¹ I. L. R., 5 Cal., 438.

dewuttor, and not liable to be attached or sold for a private debt.

Privy Council held, property not wholly *dewuttor*.

On appeal to the Privy Council, it was held that, according to the construction which their Lordships put upon the Will, the property could not be said to be wholly *dewuttor*. "They consider, that it created a charge upon the property for the expenses of the daily worship of the idol, as it was performed at the time of the death of the testatrix, and of the *poojas*, *shradhs*, and religious ceremonies for which provision is made in the Will. For the purpose of this decision the charge may be termed generally a charge for such religious acts and ceremonies. So far the case falls within the class of which that of *Sonatun Bysack v. Sreemutty Juggutsoondry Dossee*¹ may be referred to as an example."

Case of *Sonatun Bysack* followed.

Nature of the bequest of surplus.

According to the opinion of their Lordships, the provision of applying the surplus income to the support of the family, amounted to a bequest of the surplus to the members of the joint family for their own use and benefit, and that each of the sons of the testatrix took a share in the property, which, after satisfying the religious and ceremonial trusts, might be considerable, and could not be presumed to be valueless.

Prohibition of gift or sale inoperative.

It was also held, that directions given by the testatrix in her Will to the effect, that her heirs should have no power of gift or sale over the property bequeathed, and that it should not be attached or sold on account of their debts, being inconsistent with the interest actually given, were wholly beyond her power, and must be rejected as having no operation.

Conclusion.

The property was consequently held to be liable to attachment and sale in execution.

¹ 8 Moore's I. A., p. 66.

“PURTTA.”

CHAPTER VIII.

(Lecture X.)

ON THE INSTITUTION OF TANKS AND WELLS.

Enumeration of PURTTA works, 1; classification of wells, 2; embanked reservoirs, 3; classification of tanks, 4.—Additional texts extolling MERIT of constructing Purtta works, 5; equal merit of repairing, 6.—RULES OF CONSTRUCTION: location of wells, 7; their size and shape, 8; rule for embanked ponds, 9.—CEREMONIES OF CONSECRATION: Time for commencement or consecration, 10; *the Sankalpa*, 11; the ritual as in Bahuricha, 12; as in Ashwaláyana: *punyadha-va-chana* and *Vastu-yaga*, 13; subsequent ceremonies, 14; the worship in the *Mandapa*, 15; the same as in *Matsyapurána*, 16; *Varuna*, the apparent presiding deity, 17; *pratishthá* of his image, 18; the milky tree, 19; the *Yupa* or sacrificial post, 20. *The santi*, 21; substances used in *Santi-kalasa*, 22. The special ceremony of crossing by a cow, as prescribed by Bahuricha, 23; by Ashwalayana, 24; by Kapila, 25; by Hayasirsha, 26; the cow to be given away, 27.—Throwing effigies of aquatic animals into the water, 28.—Formula of dedication, 29.—Concluding ceremonies: throwing of pancha-gabya, feasting Brahmans and presenting offerings to them, 30.—Further ceremonies in case of tanks: the installation of *Naga-yashli* or the serpent rod, 31.—The finale, 32.—Effect of dedication; Legal consequences, 33; use by dedicator prohibited, 34; dedicator's right in subsoil, &c., 35; his right to repair and control, 36; prohibition of bathing in tank excavated by another, 37; effect of dedicator's low caste, 38.—Rules for PRESERVATION of tanks, 39.—Sale prohibited, 40.—*Jalsam* tenure, 41; free gift of land for tanks and wells, 42.—DECISIONS of the Calcutta High Court, 43:—*Hurnarain Gosain v. Shambhoo Nath Mundal*, *ib.* (1); *Puzeeruddeen v. Mudoosoodun Pal Chowdhury*, *ib.* (2); *Jadoonath Sircar v. Banumali Sircar*, *ib.* (3); *Chunder Kant Chuckerbutty v. Bunko Behary Chunder*, *ib.* (4); *Muhammed Akel v. Asudunnisa Bibee*, *ib.* (5); *Bengal Coal Co. v. Hurdal Marwari*, *ib.* (6).—SEC. 37 OF ACT XI OF 1859, 44.

1. We have seen before¹ that the construction of re-
servoirs of water is classed by the Hindu sages amongst
Construction of reservoirs, a
charitable
work.

¹ *Ante*, Lecture I, p. 27.

Enumeration
of reservoirs.

purtta or charitable works. The most common enumeration of these reservoirs is *vapi-kupa-tarhagāni*, a phrase occurring in the texts of *Yama*, *Atri*, *Jātukarna* and the *Varāha Purāna* already quoted in the same connection.¹ In the earlier literature of the *Parishishtas* the same enumeration occurs; the *Ashwaldyana Grihya Parishishta*² introducing this subject as *vāpādi vidhi*, 'rules relation to *vāpis* and the rest,' which is amplified in the *Bahuricha Grihya Parishishta*³ which speaks of *vapi-kupa-tarhagayajnam* in the same connection. *Pushkarinis* are mentioned in a text of *Vyāsa* already cited,⁴ and all four are mentioned in a text of the *Matsya Purāna*.⁵ This, however, does not exhaust the enumeration, as will be seen below.

Wells, classification of.

2. *Wells* are divided by the Hindu writers into two classes, namely *kupa* and *vāpi*. The *kupa* is the ordinary excavated well, the *kuā* of Bengal and Hindusthan. The *vapi* is a well with a flight of stairs leading thereto, the *baoli* of Upper India. The distinction between the two is thus set out in the *Dvaitanirnaya*.⁶ "The *kupa* is a hole without a door; the *vāpi* is the same built with stairs." The latter word is also used in another sense as will appear below.

Embanked
reservoirs.

3. *Embanked reservoirs* are mentioned in the *Aditya Purāna* under the name of *setu-bandhas*.⁷ The water in the slopes of hills or in declivities is retained by the erection of mounds or embankments, and in Western Bengal they are commonly known as *bandhs*, the same word denoting the bund as well as the reservoir.

¹ *Ante*, Lecture I, p. 26.

² अथ बाष्पादिविधिः । IV, 9, Bib. Ind., p. 342.

³ Quoted in अज्ञातयोत्सर्गनैतर्जं p. 509.

⁴ *Ante*, Lecture I, p. 26.

⁵ Quoted in अज्ञातयोत्सर्गनैतर्जं p. 505.

⁶ कूपोऽद्वारको नैतद्विधेयः ।

वह्नीयान कोऽयं

वापोति इतन्निर्धेयः ।

अज्ञातयोत्सर्गनैतर्जं p. 505.

⁷ Quoted in अज्ञातयोत्सर्गनैतर्जं p. 505. Cf. Ghosha's *Durga Puja*, note 39, pages li-lij.

4. Tanks are variously classified according to size, as *pushkarini*, *dirghik*, *drona*, *tarhāga*, *vāpi*, *sarovara* and *sāgara*. According to *Vashishttha*¹ a tank up to four hundred cubits (in perimeter) is a *pushkarini*, up to twelve hundred cubits, a *dirghikā*, up to sixteen hundred a *drona*, up to two thousand a *tarhaga*, and up to sixteen thousand cubits a *vapi*. *Vrihaspati*² classifies reservoirs into *vapi-pushkarini*, *sarovara* and *sāgara* according to their size being one hundred, two hundred, three hundred, or upwards respectively. Some of the names still survive in the vernacular languages. *Pushkarini* or its abbreviation *pushkarni* is the common name for a tank in the Bengali language, which is also the same as the Bengali *pukhur*, and the Hindi *pokhur*. *Dirghikā* derived from the root *dirgha* (long) survives as *dighi* in Bengali and is used in the same sense. I am not sure whether the Hindi *tālāb* and *tāl* have any connection with the Sanskrit *tarhāga*, but *sāgar* and its synonym *samudra* (vulg. *samundar*) are still used in the old sense, and the Bengali *sair*, which is only the decayed form of the Sanskrit *sāgara*, is also so used.

5. As to the religious merit to be acquired by constructing these water-reservoirs which are known by the generic name of *jalāsaya*, we have the following special texts in addition to those already cited (*supra*, Chap. I, sec. 24) proclaiming the reward of *purta* works in general. The *Ashwalāyana Grihya Parishishta*³ declares the merit flowing from water standing in an endowed reservoir in the six seasons, spring, summer, rains, &c., to be equal to that

Tanks, classification of.

Religious merits acquired by constructing reservoirs.

Texts—

Ashwalāyana Grihya Parishishta.

¹ Texts quoted in अज्ञातयोस्त-
नेतर्त्तं p. 505.

² Quoted in अज्ञातयोस्तर्त्तं
p. 510.

³ IV, 9 Bib. Ind., p. 343.

वसन्तयोस्तर्त्तं वर्षाशरद्वसन्तशिशिरेषु
समञ्जं स्निग्धमन्नेधराजसूयाग्नि-

होमाववाजवेद्यातिरावपुनिति ।

See these paraphrased in the texts of *Mahābhārata*, and *Vishnu Dharmottara* quoted in Hemadri, *Danakhanda*, Adhy. 13, Bib. Ind., pp. 1005-1006, and p. 1006 respectively.

derived respectively from the performance of the *Ashwamedha*, *Râjasuya*, *Agnishtoma*, *Ukthya*, *Vâjapêya* and *Atirâtra* sacrifices.

Vishnu Dharmottara.

Vishnu Dharmottara.¹—"As there is no sustaining of life in both worlds, without water, consequently the wise man should always construct reservoirs of water. A well is equal to the *Agnishtoma* sacrifice, in a desert it equals the *Ashwamedha*. The well flowing with drinking water destroys all sins. The well-maker, attaining heaven, enjoys all pleasures."

Skanda Purâna.

Skanda Purâna.²—"The man who makes a beautiful well, full of water, and bestows the same, adorned with eight variegated banners upon worthy Brahmins after having feasted them, rescues (from hell) fifty generations of ancestors and sojourns to the mansions of Varuna, accompanied by the melodious song of heavenly nymphs."

Nandi Purâna.

Nandi Purâna.³—"He who digs a *bowli* or well in a place destitute of water, attains heaven for a hundred years for every drop (of water contained therein). His resemblance to the gods is complete as he is ever free from hunger and thirst."

Vishnu Dharmottara.

Vishnu Dharmottara.⁴—"The makers of reservoirs do not see the mansions of Yama; hence a man should make a beautiful well with care; and a *bowli* is equal to ten wells."

Vishnu.

Vishnu.⁵—"Half the sins of a well-maker are destroyed in the drinking water issuing therefrom. The maker of a large tank, ever satisfied, attains the abode of *Varuna*."

¹ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1001.

² Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1002.

³ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p.

1002; the first portion is quoted in अज्ञातयोस्तुमेषवति, p. 505.

⁴ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1003.

⁵ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1002; the first portion is quoted in अज्ञातयोस्तुमेषवति, p. 505.

The *Vishnu Dharmottara*.¹—"Promises heaven to the makers of wells and large tanks." *Vishnu Dharmottara.*

Aditya Purāna.²—"Those who devote themselves to the construction of *bandhs*, the cleansing of *ghāts*, the construction of tanks and wells, are released from all fear of thirst (in the next life)." *Aditya Purāna.*

Vishnu Dharmottara.³—"The makers of water-reservoirs do not see the abode of Yama, therefore should a person (desirous of such result) carefully construct a well of beautiful shape; and similarly (the construction of one *baoli* is equal to (that of) ten wells." *Vishnu Dharmottara.*

Nandi Purāna.⁴—"He who establishes a *baoli* according to rule, in the presence of fire, and having worshipped with faith the four oceans in the water-jars placed in the (four corners), has made the gift of the earth up to the end of the four quarters. Having duly worshipped Brāhmins in its proximity, with food and drink, he sojourns to the mansions of Varuna, blessed with fulfilment of excellent desires." *Nandi Purāna.*

Yama.⁵—"The man in whose tank there is a perennial supply of water obtains the passage of heaven, there can be no doubt in this. The maker of a tank dwells in heaven for four yugas. The man who makes a tank in which at any time a Brāhmin or a cow has taken a drink dwells in heaven for ten yugas." *Yama.*

Mahābhārata.⁶—"The gods, men, deceased ancestors, *gandharvas*, serpents, *rākshasas*, and plants take the shelter

¹ तङ्गामुपकर्तारः + + + +
वे नरा स्वर्गमाप्नुयन् ॥ Quoted in
अज्ञातयोगसूत्रम्, p. 505.

² Quoted in Hemadri, Dana-
khanda, Adhy. 12, Bib. Ind., p.
1002; also

quoted in अज्ञातयोगसूत्रम्, p. 505.

³ Quoted in Hemadri, Dana-

khanda, Adhy. 13, Bib. Ind., p.
1003.

⁴ Quoted in Hemadri, Dana-
khanda, Adhy. 13, p. 1004.

⁵ Quoted in Hemadri, Dana-
khanda, Adhy. 13, Bib. Ind., p. 1005.

⁶ Quoted in Hemadri, Dana-
khanda, Adhy. 13, Bib. Ind., p.
1005.

of a reservoir of water. All the progenitors of a man obtain salvation who excavates a reservoir in which cows and good men always drink water. The man in whose tank, cows, other quadrupeds, birds and human beings are relieved of thirst by drinking, obtains the reward of the *Ashwamedha*. What they drink, what they bathe, and what they rest, all that conduces to endless rewards in the next world for the maker of the tank."

*Vishnu
Dharmottara.*

Vishnu Dharmottara.¹—"The maker of a tank attains the abode of Varuna for ten thousand years or for a *kalpa*; he acquires even greater religious merit by making it on a road-side. The maker of a tank full of water in a desert attains the abode of Brahmá seated on a car resplendent as the sun. * * * * *

He who makes a stream for irrigation, becomes the bestower of food, drink and life, and doubtless reaches the abode of *Bhagiratha*. * * * * * By making a water-pipe (*pranála*) he acquires great religious merit and is exalted in heaven. The wise man who excavates a tank with his own hands obtains the same reward as the performer of the *Rájasuya* and *Ashwamedha* sacrifices. He who is the maker of a reservoir of water participates in the fruit of all acts productive of religious merit which are performed there by other persons."

Merit of
repairing old
tanks.

"6. As in the case of temples, high rewards are promised not only for the construction of new, but also for the repairs of old, ones. *

Vishnu.

Vishnu.²—"In *wells*, *groves*, *tanks* and temples for the gods, the man who repairs them afresh has the same reward as the original maker."

¹ Quoted in Hemadri, Dana-khanda, Adhy. 13, pp. 1006-1007.

khanda, Adhy. 13, Bib. I p. 1003; also quoted in जज्ञा

² Quoted in Hemadri, Dana-

सुर्गलक्ष्, p. 505.

7. As to location, the *Devi Purāna*¹ enjoins the location of wells to the east or north, and *Varāha Mihira* lays down the following rules on the same subject :—

Rules for location of wells. *Varāha Mihira*.

“A well being situated in the south-east of a village or town is likely to occasion constant danger from fire and men. A well in the south-west causes loss of children, and one in the north-west threatens the wife. Wells in any other direction (except these three) are productive of good.”²

8. As to size and shape, according to the *Devi Purāna*,³ the depth of a well should exceed five cubits and upwards, and a round shape is auspicious. *Garga*⁴ is of opinion that a well should be from more than five cubits to twenty-five cubits in depth and of a circular shape.

Their size and shape. *Devi Purāna*.

9. The following rules, with reference to embanked ponds, are laid down by *Varāha Mihira*⁵ :—

Rules for embanked ponds. *Varāha Mihira*.

“A pond extending in a direction from east to west retains the water much longer than one running from north to south, because the latter is more often exposed to rupture by the agency of billows roused by the wind. Let him who wishes to make such a pond stem the conflux of water by means of strong timber, or make the dams on every side from stones and the like, the soil being rendered hard by trampling of elephants, horses, &c.

“The banks must be shaded by *Terminalia Arjuna*, banyan, mango, wavy-leaved fig, *Nanpha kadamba*, along

¹ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1003.

Danakhanda, Adhy. 13, p. 1004.

² Brihat Samhita, Adhy. 54, sls. 97-98, Bib. Ind., p. 297.

⁴ Quoted in Hemadri, Dana-khanda, Adhy. 13, Bib. Ind., p. 1003.

J. R. A. S. N. S., Vol. VI, pp. 308-309.

⁵ Brihat Samhita, Adhy. 54, sls. 118-120, Bib. Ind., p. 301. J. R. A. S., N. S., Vol. VI, p. 311.

³ कूपः पञ्चकूटैः कूपी दणः शुभावहः। quoted in Hemadri,

with *Barringtonia*, rose-apple, rotang, *Nancha Nipa*, *Barleria*, tâl, *Acoka* and *Bassia*, intermingled with *Bakula*.

“On one side let a flood-gate be made, in such a manner that the passage be built with stones, and let a pannel without fissures be fixed in a frame, and covered by grit heaped up against it.”

Time for
commence-
ment.

10. The auspicious times for commencing or consecrating water reservoirs are the same as those laid down for houses, temples and images. They need not therefore be repeated here.

The *sankalpa*.

11. The *sankalpa* for a *pratishtthâ* of the present nature should, according to *Raghunandana*,¹ recite as the reward for the execution of the proposed work the maker's stay in heaven for one thousand years for every drop of water accumulated therein. *Hemadri*² directs the *sankalpa* to be performed the day before the consecration ceremony, as also the performance of the *vridhhi shraddha* and the *svasti vachana*.

The ritual as
given in *Bahv-
richa Grihya
Parishishta*.

12. The ceremony of consecration is a very short one as described in the *Bahvricha Grihya Parishishta*.³ On an auspicious day the worshipper sets up fire altars near the reservoir, selecting ground which may slope to east or north; oblations with appropriate *mantras* are offered to the water-god, *Varuna*, and then a cow is made to enter the excavation of the reservoir, the worshipper holding the tail, and the priest bringing up the rear of the procession. The cow is made to come out in the north-east corner, certain texts being recited during the journey. If she makes a sound during the journey, then other texts are to be recited. Afterwards the cow properly adorned

¹ अज्ञानयोगसूत्रेण, p. 505.

² Quoted in अज्ञानयोगसूत्रेण,

³ Danakhanda, Adhy. 13, Bib. p. 509.
Ind., p. 1016.

is to be bestowed on a *Sāmavedi* or other Bráhmín, and a present made to the Acharya, or officiating priest, according to the worshipper's competence. The dedication is then to be made by the formula: May the gods, the *pitrís* and human beings be gratified. It is specially added on the authority of Saunaka that the worshipper should then feast the Bráhmíns and cause them to recite blessings.

13. In the *Grihya Parishishta* of Ashwaláyana¹ the ceremony is described with greater elaboration. The worshipper goes to a clean and pure place draining to the east or north, and there to perform the ceremonies of *punyáha vachana* and *vastu puja*. Necessarily the site must be close to the reservoir constructed or proposed to be constructed. Hemadri² too directs the performance of the *vastu yága* on such an occasion, and so does Raghunandana,³ according to which latter authority the *vastu yága* should be performed on the day of the consecration.

The ceremony
as described in
Grihya
Parishishta.

14. According to the Ashwaláyana *Grihya Parishishta*,⁴ the performance of the *vastu yága* is followed by the appointment of priests, the preparation of fire pits and *mandapas* as already described for the *pratishtthá* of images, and these directions are followed by later authorities.

Subsequent
ceremonies.

15. Ashwaláyana⁵ directs the priest to enter the *mañ-dapa* with the worshipper placing the milky-tree in its front, and to worship in the inside the golden images of *Brahmá*, *Vishnu Isa* and their wives, as also of *Vináyaka*, placed in a *mandala* or mystic circle. He also mentions golden effigies of aquatic animals to be placed around

The worship
in the *man-*
dapa.

Effigies of
aquatic
animals.

¹ IV, 9, Bib. Ind., p. 342.

² Danakhanda, Adhy. 13, Bib. Ind., p. 1016.

³ अज्ञातयोगिनं, p. 505.

⁴ Ashwaláyana, IV, 9, Bib. Ind., p. 342.

⁵ IV, 9, Bib. Ind., p. 343.

the divine images. *Kalasar* or water-pots filled with river-water, and auspicious substances and adorned with cloths, &c., are to be placed in four corners of the *mandapa* and worshipped.

The same as
in *Matsya*
Purāna.

16. The representation of the aquatic animals is thus developed in the *Matsya Purāna*,¹ a tortoise and shark of gold, a fish and water-snake of silver, a crab and frog of copper, and a porpoise of iron. "In the same work the worshipper is directed to enter the *mandapa* by the western door, after having been bathed in auspicious water by Brāhmins learned in the Veda, bearing white garlands and garments, smeared with white unguents, accompanied by his wife and issue.

Varuna the
presiding
deity.

17. The Yajna for fire-sacrifice offered in the *mandapa* is appropriately one in honour of Varuna, the water-god. In the *Satapatha Brāhmaṇa*² the brightly burning fire is designated Varuna, and according to the *Matsya Purāna*³ the fire invoked on the occasion is that known by the name of Varuna.

Pratishthā
of his image.

18. The earlier ritual confined the worship of Varuna to the aforesaid Yajna, but in the *Hayasirsha Pancharātra*⁴ a development is introduced in the shape of the *pratishthā* of an image of the water-god and his family within the reservoir.

The milky-
tree.

19. The *milky-tree* which *Ashwalāyana* directs to be planted before the *mandapa* would most naturally be a branch of one of the trees of that description. The milky-trees mean literally trees exuding thick sap like

¹ Quoted in Hemadri, *Dana-khanda*, Adhy. 13, Bib. Ind., p. 1017; also quoted in *अज्ञा-मयोत्सर्गनक्षत्रं*, p. 507.

² II, 3, 2, 10. *Sacred Books of the East*, Vol. XII, p. 340.

³ अज्ञाग्रयप्रतिष्ठायां वचनः समुदाहृतः। Quoted in *अज्ञा-मयोत्सर्गनक्षत्रं*, p. 509.

⁴ Quoted in *अज्ञाग्रयोत्सर्गन* p. 508.

milk ; but they are technically understood the four holy fig trees, *ashwattha*, &c., which have been previously recommended for the archways of the *mandapa*.

20. In the *Kapila Pancharātra*,¹ it is recommended that the *yūpa* or sacrificial post (figured like a serpent) should be placed to the north-east of the reservoir, five cubits distant from the excavation. The *Matsya Purāna*² declares that the *yūpa* should be made of the wood of a milky tree and three cubits high, or it might be made equal in height to the worshipper.

The *yūpa* or sacrificial post in the *Kapila Pancharātra*.

The same in *Matsya Purāna*.

21. The completion of the *Varuna Yajna* is marked in the *Bahvrīcha Grihya Parishishta*³ by the usual sprinkling with auspicious water. In the *Ashwalāyana Grihya Parishishta*⁴ we have the fuller direction that the worshipper should be bathed with the water from the *sānti-kalāsas*,⁵ after which the water in the jars is to be drunk by one-thousand, one hundred, fifty or even one cow with calf, to the accompaniments of hymns in honour of *Surya*.

22. The substances to be used in the *sānti-kalāsas* are enumerated in the *Matsya Purāna* to be earths of the following kind, namely, dug up by an elephant, dug up by a horse, earth from a road, from an ant-hill, from a junction of rivers, from a lake, from a cow-house and from the junction of four roads ; *gorochanā* ; white mustard seeds ; *guggulu* ; and fragrant substances ; accompanied

Substances used in *sānti kalāsas*.

¹ Quoted in *अष्टाश्वतोषमंत्रम्*, p. 509.

² Quoted in *अष्टाश्वतोषमंत्रम्*, p. 509.

³ Quoted in *अष्टाश्वतोषमंत्रम्*, p. 509.

⁴ IV, 9, Bib. Ind., p. 343.

⁵ Quoted in *अष्टाश्वतोषमंत्रम्*, p. 509.

मज्जाश्वत्थावलीकसङ्गमसुदगीकुलात् ।

सुदमादाय कुक्षेयं प्रक्षिपेत्स्वरात्तथा ॥

गोरक्षानां सिद्धार्थान् गन्धान् गृह्णुस्व च ।

सपनं तस्य कर्तव्यं पञ्चभङ्गसमन्वितं ॥

*Pancha
pallava.*

*Khsira brik-
sha.*

The "Gorut-
tarana"
ceremony.

As described
by Bahvricha.

by the *five-leaves*. The earths described above may be usefully compared with those recommended for the purification of images in connection with their *pratishthā*. The five-leaves (*pancha bhanga* or *pancha pallava*) are the leaves of the *ashwattha*, *udumbara*, *plaksha*, *vata* and *chuta*.¹ The first four, sacred representatives of the fig tribe, collectively styled *khsira brikshas*, 'milky-trees,' we have frequently met with in connection with religious ceremonies. The fifth is the mango tree, also treated as one of great auspiciousness.

23. The ceremonies up to this stage are directed to be performed for all kinds of reservoirs. The succeeding ceremony of "*Goruttarana*," or causing a cow to cross the water, cannot, from the very nature of things, be performed for wells of any kind.² The earliest available description of the ceremony is obtained from the *Bahvricha Grihya Parishista*,³ where the worshipper causes a cow to enter the water, reciting a text which invokes her to purify the liquid, and holding the animal by the tip of its tail, and followed by the *Acharya*. He comes out in the *Isana* (north-east) corner (a direction sacred

¹ पञ्चभङ्गाः शान्तिकपीष्टिककपतकृत्ता। अश्वतोषुम्बरशङ्खवटचूत पल्लवाः।
जलाशयोत्थमेतच्च, p. 509.

² एतत्पथ्येनं कूपेऽपि। जलाशयोत्थमेतच्च, p. 509.

एतत्पथ्येनं कर्त्तुं कूपे न व्यवहयेत् सप्तमात्। जलाशयोत्थमेतच्च, p. 510.

In Western India, it seems, the ceremony is observed in all cases by simply making the cow walk round the tank or well, as would appear from the following extract from Mandalik's Note on public charities, appended to his translation of Yajnavalkya :—

"Dharma-sindhu lays down that until the ceremony of *Goruttarana* (the walking of the cow

round) the tank or well, including her going to drink water therein, is made and followed by the *ut-sarga* (enunciation), the water should not be used" (p. 337). But it is not easy to comprehend how a cow could go down an ordinary well to drink water therein.

³ Quoted in जलाशयोत्थमेतच्च, p. 509.

to the gods, as we have already seen), invoking the cow or the earth (as typifying the same), to produce good pasture in the locality. The cow is then to be bestowed on a Sámavedi Brahmin, adorned with a cloth round her neck, gold on her horns, copper on her back, silver in her hoofs, accompanied by a bull-calf and a bell-metal milking vessel.

The cow bestowed on a Sámavedi Brahmin.

24. In the *Ashwāldāyana Grihya Sutra*, the cow singly, or if the means of the worshipper admit, a much larger number of cows in her company, is made to drink of the sacred water in the *sānti-kalāśas* to the recitation of hymns to Surya, before entering the water, about which the additional direction is given that the entrance should be made from the *nirrita* (south-west) corner, which is the exact opposite of the corner at which the egress is accomplished.

Cows made to drink the sacred water.

25. In the *Kāpila Pancharātra*,¹ the worshipper is enjoined to be accompanied by his wife in his journey across the water, and he is directed to cross from west to east, so that he faces east during the whole process.

The worshipper to be accompanied by his wife.

26. The *Hayasirsha Pancharātra*² improves upon this by including all the relations of the worshipper in the procession, and by directing the ornamentation of the cow to be made before its advent into water.

The relations of the worshipper to accompany the worshipper.

27. After crossing the water, the *Bahvrīcha Grihya Parishishta* directs the bestowal of the same on a qualified Brāhmin. The *Kāpila Pancharātra*,³ however, requires an oblation of water from the cow's tail to be performed on the eastern bank in honour of the deceased ancestors of the worshippers before the cow is bestowed on the Brāhmin.

Cow to be bestowed on a Brāhmin.

¹ Quoted in *अष्टाश्वतोषमेतन्*, p. 509. ² Quoted in *अष्टाश्वतोषमेतन्*.

³ Quoted in *अष्टाश्वतोषमेतन्*, p. 509.

kesara, vakula, champaka, vilva or *khadira*. *Vrihaspati*,¹ enjoins the rod to be impressed with the marks of *chakra* and *trisula*, a direction which may have originated with the occurrence of similar marks on the hoods of snakes, and will now be identified with the respective insignia of *Vishnu* and *Siva*. Raghunandana gives an elaborate ritual for the installation of the *nāga-yashti*. It is washed with fragrant water, oil and turmeric, *durva*-grass, &c., *pañchāmrita* and fruit-water, appropriate texts being recited on each occasion; then a flag with small bells is tied to the rod; it is then worshipped with *pādya*, &c., ornamented with flowers, &c., and carried near the excavation. The Acharya then vivifies a silver image of *Varuna* and throws the same into the water, followed by various purificatory substances. Then the rod is invoked by other texts and placed in the water accompanied by the mantra *yūpa-briksa*, &c., which serves to illustrate the connection between this *nāga-yashti* and the *yūpa* of earlier literature. The rationale of the rod so placed in the water would seem to be (1) to draw the attention of passers-by to the existence of the reservoir; (2) to denote the depth of the water; (3) to sustain a tired swimmer.

Worship of female divinities, and feasting of Brāhmins, &c.

32. According to Raghunandana the ceremonies conclude with the worship of the *Jala Matris* or certain female divinities; the circumambulation of the sacrificial fire; the worship of the thirty-gods *Surya* and the rest; and a parting invocation by way of apology to *Varuna* asking his forgiveness. After this² the reservoir is circumambulated by a procession with loud music from the conch-shell and other instruments, and with a vessel pouring a continuous stream of milk. The final step,

¹ Quoted in 'जलाशयोत्सर्गनक्ष', p. 510.

² *Kāpila Pancharatra*, quoted in 'जलाशयोत्सर्गनक्ष', p. 511.

according to Raghunandana, quoting the *Matsya Purāna*¹ as his authority, is to feed one thousand, eight hundred, fifty or twenty Brahmins according to the means of the worshipper.

33. The water of a reservoir so dedicated ceases to be private property according to the Hindu religious idea, and is equally the property, not only of every human being but of every animated being in creation. In commenting on the text of Katyayana: "He who hires, at a fixed rent, a house, A POOL OF WATER, a market place or the like, shall be compelled, *in a court of justice*, to pay the rent of it, until he restore it to the owner." Jagannatha² quotes the observations of the *Vivāda Ratnākara* and the *Vivāda Chintāmani* that a pool of water in the above passage means "one made by another man, and not consecrated, *but intended for use in this world*;" and further proceeds to add the logical conclusion that "it appears therefore that no rent should be paid for a consecrated pool to him who made it." This extinction of the right of property in the consecrator is mentioned by Raghunandana,³ who is of opinion that the consecrator by relinquishing his own right makes the water of the consecrated tank common property like that of a river, &c.; this public right, however, does not arise unless the consecration has been effected with the text: "This water has been given by me to all beings in common; let all beings be satisfied by bathing, drinking and immersion." The same idea is thus alluded to by Kulluka Bhatta. Menu in his Institutes, IV, 202, prohibits the use of another person's well without his permission on penalty of being saddled with one quarter of his sins. Kulluka in com-

Reservoir of water so dedicated ceases to be private property, and becomes the property of every animated being.

¹ Quoted in *अज्ञानयोगसूत्रम्*, p. 511.

sec. 2, sl. 101, Madras reprint, Vol. II, p. 50.

² Digest, Book III, Chap. I,

³ *अज्ञानयोगसूत्रम्*, p. 510.

menting on the above remarks that the above prohibition does not apply to the case of a well which has been dedicated for the use of all.

The dedicator's use of the water. Difference of opinion.

34. Certain writers forbid a person to use the water of a tank so dedicated by himself, upon the principle that a man ought not to take back what he has given himself. Raghunandana, however, combats this opinion and permits the dedicator to use the water just as any other member of the public.

The sub-soil, and the banks remain the property of the dedicator.

35. As the dedication, however, is of the water alone for use by ablution and drinking the right of property in the sub-soil and surrounding banks would remain with the dedicator if he chose to retain the same, subject to the granting of reasonable facilities for the user of the rights granted in the water. Similarly he would retain if he chose to do so the exclusive right of property in the fish and other products of the tank. The public who obtained a right to the water could not make a destructive use of it, as by cutting the tank for purposes of irrigation which is not only outside the scope of the grant, but would altogether defeat the primary object by drying the reservoir.

Mandalik's opinion about the right to the reservoirs so dedicated.

36. Mandalik, writing about the *utsarga* ceremony in the case of tanks and wells, &c., observes, that "the repair and control of the things thus dedicated, and the ownership of which has been renounced, generally rest with the renouncer according to the usage of the country." He then quotes the following remarks of *Mitra Misra* from *Viramitrodaya Vyavaharaddhyaya*, which tend to confer on the dedicator a sort of guardianship over the thing dedicated.

"But ownership, so far as protection is concerned, does exist in the donor even when his ownership, consisting of the power of disposition at pleasure, has been withdrawn

(by renunciation) until the final accomplishment of the purposes of the donor, who seeks a certain merit according to precepts (or gifts); for the act imported by the word gift will not be complete until the ownership of another has arisen. The ownership will in this instance (exist) in the same way as (it does in) the case of substances sacrificed, lest sin arising out of prohibitions about their being touched by prohibited (animal or person) should stick (to the sacrificer). In this way (*i.e.*, on the above hypothesis), the possibility of a stranger appropriating (a thing given in the former case) and of the forbidding (an unclean touch) being precluded (in the latter case) will not arise, although the ownership of another (*viz.*, the donee) has not arisen (in the thing given). The practice of the learned, too, in both cases in respect of protection is based on that (limited kind ownership which has been referred to before)."¹

37. Menu in his Institutes, IV, 201, and Apastamba² prohibit a person from bathing in a tank or other reservoir excavated by another person, and the former in a succeeding sloka (IV, 203) recommends the resort to natural streams, reservoirs and springs. There can be no doubt that, generally speaking, natural water would be more clean and healthy than water stored in an artificial excavation. The total prohibition of the use of the latter, however, being impracticable we find *Yajnavalkya*³ directing that one bathing in a reservoir excavated by another should first dig out five balls of earth. This rule, if followed, would provide an automatic machinery for the perpetual preservation of the tank from silting.

Difference of opinion between Menu and *Yajnavalkya* regarding the use of water in reservoirs excavated by another.

¹ See *Mandalik's Vyavahara Mayukha* and *Yajnavalkya, Appendix II*, p. 337.

² Institutes, II, Adhy., sl. 5, Bombay edition.

³ Quoted by Kulluka in comm., Menu, IV, 201.

Stigma attached to the use of water from reservoir constructed by low caste men.

38. Notwithstanding the public property in dedicated waters, a stigma attaches to water from reservoirs constructed by men of low caste. The association of ideas with an actual gift of water from the hands of such a person may account for this feeling. *Parásara*¹ lays down a penance for drinking water from a tank excavated by a *chandála*.

Value of tanks for irrigation purposes.

39. The value of tanks for irrigation purposes was early recognised by the Hindus, and rules laid down for their preservation. In the *Mahābhārata*² Narada enquires of Yudhishtira, whether in the latter's realms there be tanks large in size, and full of water, placed at proper localities so as to make agriculture independent of rain. Menu³ prescribes a penance for the complete draining of a well or tank, which might be ascribed to the sin of depriving others of the use of the water, or to that flowing from the loss of aquatic life resulting from such an operation. Severe penalties are provided in other passages of the same sage⁴ for those who destroy tanks or obstruct the course of water-streams.

Sale of a tank sinful.

40. The sale of a tank is spoken of by Menu⁵ to be equally sinful with the sale of a wife or child.

Jal sasan tenure for excavation of tank on another man's land at a quit rent.

41. It often happens that a man owning a piece of land suitable for the construction of a water-reservoir is unable or unwilling to take upon himself the trouble and expense attending such an operation. In such cases it is very common for him to make over the land to another person who is so willing for a consideration of a quit rent. Such a tenure is called *jāḷ sāsana* and is very common in the western districts of this Province.

¹ 10 Institutes, VI, 23.

² *Sabhā Parvam*, V, 77, Roy's ed., p. 14.

³ Institutes, XI, 164, comm., Kulluka.

⁴ Menu, IX, 279, 281.

⁵ Institutes, XI, 62.

The grantee has the right to the tank and such quantity of land around irrigated therefrom, as may be arranged beforehand between the parties. Considering the capital outlay and the fact that for the most part arid and waste soils are selected for the purpose, the tenure is always hereditary and the rent low and permanently fixed. Upon such a tenure the tank is the private property of the grantee. Generally he allows his neighbours to take water from it for bathing and drinking purposes as a license, though, as a matter of law, if he should consecrate the tank by the universal formula, the water would no longer remain his exclusive property, but be open equally to the use of all persons and animals for drinking and bathing.

42. It is not unusual, however, for the superior landlord to forego his rent, and provide instead for the free distribution of the water for his tenants or for the general public. In addition to the religious motive there is also in many such cases the secular incentive of an improvement in the property on account of the convenience to the tenants on neighbouring lands. The gift of land for the construction of a water reservoir is also productive of high religious merit according to the *Shastras*. Vishnu Dharmottara (quoted in *Hemadri Danakhanda* : Adhy. 7, Bib. Ind., p. 502) :—"He who gives land for the construction of a water reservoir attains the abode of Varuna."

Gift of land for construction of a water reservoir, and renunciation of claim for rent are meritorious acts.

43. In connection with such a condition, the following cases have been decided in the Calcutta High Court :—

(1) *Hurunarain Gossain v. Shumbhoo Nath Mundul and others*.¹—This case was heard by Loch and Seton-Karr, JJ., who were of opinion that, "under the law as at present understood and acted on," grants for tanks were invalid and resumable by the zemindar. "The jumma to be assessed on

Legal decisions about the validity or otherwise of rent-free grants for construction of water reservoir.

Hurunarain Gossain v. Shumbhoo Nath Mundul and others.

¹ 1 W. R., Civil Rulings, p. 6.

the tanks will naturally be the julkur that appertains to, or is fitting for, property of that nature." It appears, however, that at the time this case was decided a similar point was awaiting decision in a case before the Full Bench, and their Lordships accordingly limited their "present orders to a declaration of the plaintiff's right to assess rent on the three tanks" in dispute, subject to the decision of the Full Bench in the other case.

*Peezuruddin v.
Mudhosoodun
Pal Chowdhury.*

(2) It seems that this other case was no other than the case of *Peezuruddin v. Mudhosoodun Pal Chowdhury*,¹ which was decided in the following year by a Full Bench on a reference by Mr. Justice Loch himself. The facts of the case and the substance of the decision arrived at by the Full Bench will appear clearly from the following head note of the case given in 2 W. R., p. 295 :—

"A zemindar, by a sunnud dated in 1830 (after reciting that there was no water in Talook A, and that, the river being at a distance, great inconvenience was felt for want of water, in consequence of which desertions took place in the village) granted to B twenty-two beegahs of land rent-free, stipulating that B should dig a tank on the land and continue to distribute water. The grantee dug the tank and continued to distribute water. In a suit to annul the grant, on the ground that it was void under sec. 10, Regulation XIX of 1793, held by the majority of the Court (dissentient, Levinge, J.), that grants of land made by zemindars free of rent are void under the provisions of that enactment. But further held, by the majority of the Court (*dissentientibus*, Trevor, J., and Loch, J.), that the grant in question is valid, the reservation of a right to the use of the water by the tenants of the zemindaree being a benefit or service in the nature of rent reserved to the zemindar

¹ 2 W. R. F. B., p. 15; B. L. R., Sup. Vol., p. 75.

and that the grant was therefore either not one of those intended to be dealt with by sec. 10, Regulation XIX of 1793,¹ or was one which the zemindar was empowered to make by Regulation XLIV of 1793."

In the judgments passed by the learned Judges who composed the Full Bench, a good deal of discussion will be found as to the meaning and intentions of the Government in passing the above Regulations and as to the validity of rent-free grants created by zemindars, and the imports of the terms "rent" and "revenue" used in the Regulations. We need not enter into these details, and for our present purposes, it will be sufficient to note some remarkable comments of some of the learned Judges in this connection.

Mr. Justice Norman, the Officiating Chief Justice, observed, that "by the acceptance of the grant in question, the grantee and his heirs are bound to allow the tenants of the zemindar in the village to take water; and that liability is one which might be enforced by the zemindar or his successors, owners of the zemindary for the time being, if the grantee failed to continue to distribute water, or, in other words, to allow use of the water in the tank to the tenants of the village."

Judgment of
Mr. Justice
Norman, Offi-
ciating Chief
Justice.

¹ Section 10 begins as follows:—

"All grants for holding land exempt from the payment of revenue, whether exceeding or under 100 *beeghas*, that have been made since the 1st December 1790, or that may be hereafter made by any other authority than that of the Governor-General in Council, are declared null and void, and no length of possession shall be hereafter considered to give validity to any such grant, either with regard to the property in the soil or the rents of it."

"The object of this law, it was

said, was to prevent the interests of Government being prejudiced by reason of the *rent or revenue*, remaining to the zemindar and accruing from the other portions of the estate, being insufficient to meet the public demand for the whole estate. Government had also intended to protect the rights of the descendants of the zemindar and to prohibit grants, which would be seriously detrimental to these rights."

See *Field's Regulations*, pp. 234 and 255.

"It is clear that the revenue or rent reserved to the zemindar need not to be a money rent; it may be a portion of the crops in specie, or apparently anything else having a money value. The word "rent" is large enough for that purpose. In Coke upon Littleton, 142a, of Rent Service, it is said :—'The rent may as well be in delivery of hens, capons, roses, spurs, bows, &c., or any other profit that lies in render, office, attendance, and such like, as in the payment of money.'"

* * * * *

"So far from prejudicing the interests of the Government, the grant by securing water for the use of the inhabitants of the village appears to have been an essential means of placing the zemindar in a position to realize the Government revenue, and increasing the security of the Government. It was, therefore, clearly not within the mischief intended to be guarded against by the Regulations above referred to, and therefore may be said to be out of the purview of the enactment. (See Lord Coke, 2nd Institute, p. 886; Comyn's Digest Parliament, R. 15, R. 16.)

"Again, water may be treated as the produce of the land, a portion of which the zemindar and those authorized by him are entitled to take. And the right to take it may be considered as of the nature of a reservation of rent in kind."

(We shall subsequently see how this view was held to be erroneous by the learned Sir Barnes Peacock who was of opinion that, even without this consideration of "rent," the grant would be valid all the same.)¹

Judgment of
Mr. Justice
Shambhoo
Nath Pandit.

Mr. Justice Shambhoo Nath Pandit observed :—

"These rent-free grants were very rarely given by the proprietors in consideration of money. These were always pious and religious gifts. It was well-known that Hindoos

¹ *Mahomed Akil v. Assadunnissa Bibee*, 9 W. R., p. 1. See p. 218.

and Mahomedans invariably respect such gifts of their own creation or of their predecessors, and think it a disgrace and *sin* to take away lands given to Bráhmins, saints and fakeers, as gifts during religious ceremonies for use and cultivation, or for private houses, tanks, orchards, public temples or other religious and charitable purposes. Even purchasers by private sales or at auction for revenue, Hindoos as well as Mahomedans, generally respected such grants, until about 30 years ago some Bengalees, having become zemindars by private purchase or by public sales, turned a new leaf, and braving the public opinion of their countrymen, began to exercise resumption rights, and so tempted some others to follow their example. With regard to rent-free grants after 1765 up to 1790, out of regard to these time-honoured feelings of the people, the Government, by sec. 3, Regulation XIX of 1793, provided that grants within 10 beeghas given for charitable and religious purposes under certain circumstances and conditions were not to be resumed. Actions for resumption by landlords were very rare before, and even now all zemindars, &c., do not exercise these rights. The respect generally shown before, and the disrespect exhibited by some persons since, the new idea has prevailed, relates to, and affects, not only the grants subsequent to 1790, but also invalid grants existing before that year. It was within the powers of the zemindars to give or withhold this authority to resume, when they made settlement of their lands with others on a long lease or in perpetuity, and it has been observed that in former times such a power was often withheld even when *putnees* were granted for a consideration."

His Lordship was not decided as to the general question of the powers of zemindars to make rent-free grants, but as to the particular case agreed with the Officiating

Chief Justice in holding the grant in question to be valid. Loch and Trevor, JJ., held all rent-free grants to be void, and would make no exception of their grant of tank even.

Judgment of
Mr. Justice
Levinge.

Mr. Justice Levinge quoted a judgment of Mr. Dick in a similar case¹ before the Sudder Court, in which he had spoken as follows :—

“Grant of the nature in question *quod* the grantors and their heirs, affect not the public revenue. They affect merely their own rental. The grantor continues himself to pay the revenue, and if he do not, the estate is sold, and then the grant becomes null and void. The law (sec. 10, Regulation XIX of 1793) was enacted to prevent alienation ‘prejudicial to the security of the public revenue,’ not to enable proprietors and their heirs (whose ancestors’ acts are theirs) to profit by their own wrong. The proprietors and their ‘successors,’ who are authorized to resume at pleasure, are not those who made the grants, or their hereditary ancestors. An auction-purchaser can annul grants and alienations. This the law declares. All *bonâ-fide* alienations are binding on those who made them and on their heirs. This justice requires, and our precedents have decided.” His Lordship also held the identical views. He held that the words “exempt from the payment of revenue” in sec. 10, Regulation XIX, 1793, were not synonymous with rent-free. *Rent* is that which is payable to the zemindar by holders of land under him, and *revenue* is what is paid to the State, exemption from which would entitle a land to be termed *lakhraj*, but not rent-free. By Regulation I of 1793, sec. 9, Art. 8, the zemindars were plainly vested with proprietary rights which they could transfer at will, “by

¹ *Raja Modhnarain Singh v. Ahmed Ali Khan*. Sudder decision 1855, p. 395.

sale, gift or otherwise," and be referred to other portions of the Regulation by which it was plain to him that the right of the zemindar to create a rent (not revenue) free tenure was recognised. If the zemindar cannot make such a disposition, what becomes of his proprietary rights? "They are fritted away and controlled by a shadowy distinction. Those who contend that a zemindar cannot grant a portion of his estate to a member of his family free of rent, payable to him or his heirs, admit he may lease in perpetuity so as to find himself and his heirs a pepper-corn rent—an alienation—just as injurious to the zemindars as a grant of portion of it rent-free." He therefore held that the grant of tank in question was a valid grant, as there was no express law which prohibited the creation of grant of lands, *free of rent, payable to the zemindar.*

(3) Passing over the Full Bench case of *Sonaton Ghose* Sonaton Ghose v. Abdul Furrar. in which the general question of resumption of *lakhraj* grants subsequent to 1790 was again the subject of a diversity of opinion among the learned Judges, we come to the case of *Jadunath Sircar v. Bonomalee Mitter and others.*¹

In this case it was held that "a tank granted subsequently to 1790 is liable to resumption in the absence of Jadunath Sircar v. Bonomalee Mitter and others. proof of its having been either the condition of the grant or the intention of the grantor that the tank should be a public benefit. It was also held that such a case does not come within the ruling of the Full Bench of the 9th of January 1865, *viz.*, in the case of *Peezuruddin v. Mudhosoodun Pal Chowdhury.*" The judgment of the Court (Loch and Seton-Karr, JJ.) was as follows:—

"We have compared this case with that decided by the Full Judgment of Loch and Seton-Karr, JJ. Bench of 9th January 1865, which had regard to the ques-

¹ 2 W. R., p. 295.

² 2 W. R., F. B., p. 15.

tion of the validity of tanks granted rent-free for the benefit of the public. But on examining the sunnud in the case, we do not find it to be on all fours with the sunnud in the case decided by the Full Bench. In that case the grant was made avowedly for the benefit of the public, owing to the scarcity of water and to prevent desertion ; and the grant was upheld by the majority of the Court, because the use of water by the tenant of the zemindaree was looked on in the nature of rent reserved to the zemindar.

“But, in the present case, the grant says nothing about scarcity of water, depopulation of the village, or any public benefit. No such plea appears to have been advanced by the tenant ; and though the Civil Court does find that the tank is a public benefit, there does not seem to be anything to warrant a finding that such was the condition of the grant or the intention of the grantor. The second Court has wholly missed the point at issue, and has misapprehended the case.

“No doubt, when any individual has once excavated the tank, other persons and neighbours besides the excavators may drink of the water. But we think that we ought, in a case like this, to look at the intention of the grantor, and the general benefit to the public at large ; and no such benefit appears to have been contemplated in this case.

“Accepting, then, the doctrine laid down by the majority of the Court in the Full Bench decision quoted, we are unable to say that the present suit comes within that ruling, and we think it desirable that the said doctrine should not be strained or carried too far. In this view, holding the case not to be on all fours, and the grant to be admittedly one posterior to 1790, we see nothing to bind the putneedar from enforcing the rights inherent in this tenure, and we reverse the decisions of both Courts and decree this appeal with costs.”

(4). The dicta laid down in the above two cases were, however, wholly or partly overruled by the decision in the case of *Mahomed Akil v. Assadunnissa Bibee*,¹ which we will presently examine, after noticing the case of *Chunder Kant Chuckerbutty v. Bunko Behary Chunder and others*,² which precedes that case in chronological order.

In this case it was held that "a zemindar is entitled to resume lands held under an invalid grant or no grant at all, in which a tank was allowed to be excavated by the defendant, not for the public benefit but for a bonus."

The following is the judgment of the High Court in this case :—

"We are unable to understand the legal grounds on which the Principal Sudder Ameen has proceeded in disallowing the plaintiff's rights to resume the tank which the first Court had allowed. The case at first sight might appear to fall under the ruling of the Full Bench of the 9th of January 1885, W. R., Vol. 10, page 15. But in the present case, there is no mention of a sunnud, and nothing in the amuldaree chitta, which is the only document produced, to show that the tank was allowed to be excavated for a public benefit, or that the right to water granted to the tenants was in the nature of rent reserved to the zemindar. The case is simply one where the husband of the plaintiff granted the defendants leave to dig a tank for a bonus; but there is nothing to show that the tank was a public one for the benefit of the whole village, so as to make the case fall within the Full Bench ruling referred to. In this state of things, and on the facts found by the Lower Court, the defendant is not in a legal position to resist the undoubted right of the plaintiff to resume lands held under invalid grants or under no grant at all. There is no necessity for any further enquiry or

*Chunder Kant
Chuckerbutty v.
Bunko Behary
Chunder.*

¹ 9 W. R., p. 1.

² 3 W. R., p. 177.

finding. This Court is fully in a position to say what the legal rights and position of both parties are ; and we accordingly reverse the decision of the Principal Sudder Ameen, and restore that of the first Court with costs."

*Mahomed Akil
v. Assadun-
nissa Bibee ;
Muttu Lal Sen
Gywal v.
Deshkar Roy.*

(5). Then follows the important decision of the Full Bench in the famous case of *Mahomed Akil v. Assadun-nissa Bibee*.¹ This and another case, *Muttu Lal Sen Gywal v. Deshkar Roy*,² originally came up before Jackson and Campbell, JJ., for deciding the question "how far the grant for valuable consideration by a zemindar of a specific portion of land to be held without payment of rent is valid as against the heirs of the grantor or purchaser by private sale of the estate. As there had been some conflict of decision upon the point in two very recent cases, their Lordships referred the question to a Full Bench of five Judges including the Chief Justice. A great complication arose out of this reference,—first by the departure of the Chief Justice and Mr. Justice L. Jackson to Europe on account of ill-health, and secondly, when after their return the case was re-argued before a Full Bench of nine Judges, by the death of Justice Shambhoo Nath Pandit and the retirement of Justices Trevor and Campbell before judgment could be pronounced. These Judges had sent in written opinions before their death or retirement, but the remaining six Judges sitting on Full Bench of the 14th December 1867, unanimously declared that such minutes could not be treated as judgments. These Judges being equally divided in opinion as to the main point in question, the opinion of the Chief Justice prevailed according to provisions of sec. 36 of the Letters Patent ; the Chief Justice and Justices Jackson and Macpherson holding that such grants were "valid as against the heir of the grantor or a purchaser from him by private

¹ 9 W. R., F. B., p. 1.

² 9 W. R., F. B., p. 1.

sale of the zemindary; and that, under sec. 10, Regulation XIX of 1793, such heir or purchaser is *not* entitled to resume the land. Justices Bayley, Norman and Seton-Karr, holding a contrary opinion, were thus overruled.

“As at present our attention is confined to the subject of grant of tanks only, it is useless to enter into the lengthy arguments, *pro* and *con*, the subject of grants of rent-free lands in general. But bearing in mind the application of the general principle to all grants of land for religious or charitable purposes, which are generally held rent-free, the student will do well to follow these learned arguments both in *Peezuruddin v. Mudhosoodun Pal Chowdhury* and the present case, in which the question raised in the former case is threshed out exhaustively. This question appears to involve a consideration of the whole policy of the Revenue Laws regarding the burden imposed on land on behalf of the State, and the creation of the rent-free tenures subsequent to the Permanent Settlement, quite as much as it involves any rights or privileges conceded to the zemindars of Bengal by that great measure.”

In his judgment in the case of *Peezuruddin v. Mudhosoodun Pal Chowdhury*,¹ Mr. Justice Shambhoo Nath Pandit had remarked :—

Remarks of
Mr. Justice
Shambhoo
Nath Pandit.

“If the words of section 10, Regulation XIX of 1793, are strictly construed, rent-free grants subsequent to 1st December 1790 might be considered resumable even by the persons making such grants, and accordingly it might also be thought to be within the power of their heirs and successors and privies to re-attach the lands to the estates from which they were so alienated. It may appear to be unjust and inequitable that any person should

¹ 2 W. R., Civil Rulings, p. 22.

have right to take advantage of his own wrong, that grants made for consideration should be resumable by the party making the same, and that his heirs should be empowered to question the legality of the act of their predecessors. *But perhaps the policy which dictated the laws preferred to protect the rights of the Government without any regard to the hardship or injustice noticed above."*

Criticised by
Sir Barnes
Peacock.

Sir Barnes Peacock, in his learned judgment on the present Full Bench case,¹ took exception to these remarks of Justice Pandit and remarked :—

"What man's property will be safe if such rules of construction be adopted? For my own part, I hold that it was not against the policy of the Revenue Laws or of the Permanent Settlement to allow a zemindar to avoid his own or his ancestor's rent-free grants. If the Legislature has declared that all rent-free grants are void, we must administer the law as we find it, however much we may reject it, and disapprove of the policy." (But at the time these remarks were made, Justice Pandit was no more in the land of the living, and one may be curious to know what view of the case had been taken by him in the written opinion, which, this Full Bench declared, could not be treated as a judgment, although it might have been intended to be as such.) In conclusion, Sir Barnes Peacock delivered himself in such forcible language as this : "But I am to judge of the intentions of the Legislature from the language which they have used ; and without the clearest and most unambiguous expressions I cannot impute to Lord Cornwallis and to the distinguished men who formed his Council, a policy so narrow-minded, so obstructive of progress, so short-sighted, so mean and paltry, so utterly at variance with all the solemn declarations of Government, so fraught with injustice, and so

¹ 9 W. R., p. 53.

conducive to fraud, as that which has been contended for on the part of the plaintiff."

Leaving apart the question of the general principle involved in the case, Mr. Justice Seton-Karr observed :—

Judgment of
Mr. Justice
Seton-Karr

"The cases referred to us by the Divisional Bench in this instance comprise several grants. Grant No. 2 is for a tank excavated for the convenience of men and of cattle ; and it appears to me, that this grant ought to be governed by the decision of the majority of the Full Bench of the 9th of January 1865 (*Peezuruddin v. Mudhosoodun Pal Chowdhury*),¹ and that it must hold good against the heirs and successors of the grantor, or against any purchasers, save the purchaser at a sale for arrears of public revenue."

The same learned Judge also remarked that "the decision of our Full Bench of January 9th, 1865, does not finally *rule* more than that water is in the nature of the rent which the zemindar might receive from a tract otherwise barren and profitless. Water, obviously, is essential to the well-being and even to the very existence of the population, and the tank in that case was, in several ways, a benefit to the land, and a return to the zemindar.

"It may be said, on the other hand, that there is no difference practically, as regards the security of the public revenue, between leases at pepper-corn rent which any zemindar may legally create, and rent-free grants, which, in this view he may not create. But looking to possible and probable results, there is a difference, and a somewhat substantial difference. In the case of land leased at however low a rent, some record of the same must still be kept in the zemindaree papers. The rent, if it were only a rupee for a large village, would still be collected, and traces would be found of the tenant who paid the rent. . . .

¹ 2 W. R., p. 15.

"If rent-free alienations at this day are desirable, and are to become general, let the Legislature declare this by a new Act. If grants are required by any liberal and large-minded individuals for a special purpose, such as a people's park, let a private bill be introduced for that purpose in each case."

Judgment of
Mr. Justice
Norman.

Mr. Justice Norman in the course of his judgment said :—

"The suit is one to resume and assess lands within the plaintiff's mouroosee izara.

"As to plots 2 and 3, which were granted for the purpose of making a tank at which the village cattle might drink, I believe we all agree. Indeed, the case is governed by that of *Peezuruddin v. Mudhosoodun Pal Chowdhury*,¹ reported in Sutherland's Weekly Reporter, p. 15, by which, I suppose, this Bench is bound."

Judgment of
Sir Barnes
Peacock.

Sir Barnes Peacock's view of the subject was, however, quite contrary, as will appear from the following :—

"The Officiating Chief Justice, Mr. Justice Norman, in the 2nd Full Bench, considered that, as a right was, by the grants then under consideration, reserved to some of the villagers of the estate to take water from the tank, for the construction of which the grant was made, the water might be considered as the produce of the land, and that the right to take it was in the nature of a reservation of rent in kind. But the other Judges did not concur with him in that view ; and with all deference, I am of opinion that if it was necessary to reserve rent in order to prevent the grant from being void as a grant for holding land exempt from the payment of *revenue*, the right reserved to the villagers to take water from the tank was not a reservation of rent, and it was still less a reservation of revenue : it was a kind of revenue which

¹ 2 W. R., p. 15.

was wholly useless to Government, and could not assist them in meeting the necessities of the State; and if it was rent, it could not assist the zemindar in providing for the payment of the revenue.

"In the case now under consideration, one of the grants was an absolute grant to the grantee and his heirs for digging a tank; one was an absolute sale of land to the grantee and his heirs for the purpose of building a house; and others were sales of land generally to the grantee and his heirs. It is clear that if a reservation of rent was necessary, the erection of a dwelling-house on the land granted for that purpose could not amount to a payment of rent or revenue *whatever opinion may be entertained as to the water of a tank.* It would be a great anomaly if (under secs. 5 and 8 of Regulation XLIV of 1793 and Act XI of 1859) such a grant (for building a house) were binding upon a purchaser at a sale for arrears of revenue, and not binding upon the grantor himself or his heirs."

The learned Chief Justice based his contentions upon the case of *Paramanick v. Odeynarain Mundul*.¹ "In that *Paramanick v. Odeynarain Mundul* case, the plaintiff purchased the rights and interests of one Doorga Dass in a putnee talook, and sued to recover a tank within that talook. The land in which the tank was made was granted in 1217 B. S., before the putnee was created, to the defendant by the zemindar to be held *rent-free*. The Judge gave a decree for the plaintiff upon the ground that no such grant made after the Decennial Settlement could stand, but upon appeal to the Sudder Court the decree was reversed. It was held by the Sudder Court that the Judge's argument will be applicable should the rights of the zemindar be sold for arrears of revenue,

¹ 6 Sudder Dewany Adalut Reports, Select Cases, p. 231. *Peezuruddin v. Mudhosoodun Pal Chowdhury*, 2 W. R., p. 27.

Referred to by Levinge, J., in

but can never apply to the case of a purchaser of the mere rights and interests of the putneedar. It was also declared that the tank had been improperly called lakheraj. It was not lakheraj, for it had not been exempted as such from the general state for which the zemindar paid the revenue to Government. (The rule laid down in this case was also followed in *Hurree Mohan Dass v. Pran Kishen Rae*.¹)

*Hurree Mohan
Dass v. Pran
Kishen Rae.*

"Here, then," says Sir Barnes Peacock, "was an express decision not based upon the ground that the land granted was for a tank, nor upon the ground that water of the tank was rent or revenue. It was decided upon general principles applicable to all rent-free grants made after 1st December 1790, and *after* a permanent settlement." The learned Chief Justice then cited three other cases,² in none of which the contended construction was put on sec. 10 of Regulation XIX of 1793. The first of these cases was for the recovery of certain land which had been granted rent-free by the plaintiff's ancestor, and the second was for the resumption and assessment of certain land granted rent-free for the purpose of digging tanks. In both of these cases, it was contended that the grants were void under sec. 10 of Regulation XIX of 1793, but the Sudder Court held, in the first instance, that "the plaintiff could not repudiate his own act and that of his ancestors;" and in the second instance the case was remanded as not coming under the Resumption Laws, but under sec. 8, Regulation XLIV of 1793, as a case between landlord and tenant.

"The only case," says Sir Barnes Peacock, "in which I find that such a construction was put upon the section, is that

¹ Sudder decisions 1847, p. 447.

(2) No. 1157 of 1854.

² (1) *Modhu Narain Sing v. Ameeroonnissa Begum*, Sudder decisions, 1852, p. 967.

(3) No. 336 of 1857, Sudder decisions, 1858, p. 968.

of *Raja Madh Narain Singh v. Ahmed Ali Khan*.¹ In *Raja Madh Narain Singh v. Ahmed Ali Khan*, that case, Ahmed Ali Khan was plaintiff. He sued to recover possession of certain lands given to him by Raja Mitterjeet Singh, the defendant's ancestor, in 1211 Hijra, in exchange for a copy of the Koran, and from which the defendant, Raja Madh Narain Singh, the heir of Raja Mitterjeet Singh, had ousted him, claiming a right to do so under the provisions of sec. 10. The Principal Sudder Ameen held that the grant of the defendant's ancestor was valid, and that it could not be ignored under sec. 10, Regulation XIX of 1793, and he gave the plaintiff a decree for possession of the land to be held rent-free. The Additional Judge, on appeal, held that the plaintiff was entitled to possession upon condition of his paying rent for the land, upon the ground that sec. 10, Regulation XIX of 1793, did not sanction the grant of any land made after 1st December 1793 exempt from the payment of revenue." On appeal the Sudder Court (Sir Robert Barlow and Mr. Binny Colvin with Mr. Dick dissenting) held that the grant was void under sec. 10, Regulation XIX of 1793, that the decision of both the lower Courts were wrong, and that defendant was entitled to take possession of the estate.

The case of *Paramanick v. Odey Narain Mundel* was cited by the plaintiff's pleader in that case, but the learned Judges did not refer to it and relied upon language of the Sudder Court in the case of *Shaik Shufaitoolah v. Joy Kishen Mookerjee*. Sir Barnes Peacock, however, thought that they must have entirely misunderstood the passage.

¹ Sudder decisions. 1855, p. 395. "This case," says the learned Chief Justice, "seems to have been the origin of the impression that grants

not reserving any rent are void, but that grants which reserve a nominal rent are valid and binding." 9 W. R., p. 43.

"The suit in that case was to resume and assess invalid lakheraj lands, not to recover lands which the zemindar or his ancestor had sold.

Further reasons advanced by Sir Barnes Peacock.

"The whole question turns upon the construction of the words in sec. 10, Regulation XIX of 1793, "*all grants for holding land exempt from the payment of revenue.*" Some of the Judges held that these words include grants or leases by a zemindar to hold exempt from the payment of rent. A zemindar may have granted lands rent-free for the life of a particular individual or absolutely, in order to make provision for a wife or daughters, or other dependents, or for the purpose of erecting and maintaining a charitable school, or a scholarship or an hospital, or for some other charitable purposes. "The zemindar himself may," says the learned Chief Justice, "be too honest and too honourable to invalidate his own grant and to resume the lands, but if the construction put upon Regulation XIX of 1793 by some of my honourable colleagues in this case is correct, it will be compulsory upon the manager of his estate, if he should become disqualified by insanity or any other cause, to resume the land, to treat the occupiers as trespassers and turn them out of possession."

In his Lordship's opinion the word "revenue" is used in sec. 10 of the Regulation in its ordinary and proper sense, and refers only to grants for holding free from payments of revenue to Government.

In his able and exhaustive judgment, the learned Chief Justice vindicated the framers of the Regulations for having used the words "revenue and rent" loosely or having confounded the one for the other. He showed how before the settlement, the then "rent" was Government "revenue," and how afterwards "rent" and "revenue" became distinct; and by a careful analysis, he demonstrated the different and precise scopes of the two Regulations XIX and XLIV of 1793

The conclusions which the learned Chief Justice arrived at are thus summed up by his Lordship :—

Conclusions arrived at by Sir Barnes Peacock.

"1st.—That, after a permanent settlement, a grant by a zemindar to hold land 'rent-free' is not a grant to hold free from the payment of revenue.

"2nd.—That such a grant is void as against a purchaser at a sale for arrears of revenue ; but that, as long as the revenue is paid, it cannot be treated by Government as a nullity as affecting their interests injuriously.

"3rd.—That a rent-free grant cannot be treated as a nullity by the grantor or his heir, or by any person claiming through him."

The last case that I will read to you is that of the *Bengal Coal Co. v. Hurdial Marwaree*.¹

Bengal Coal Co. v. Hurdial Marwaree.

The facts were that the Manager of a Coal Company had allowed a person to settle on the lands of the Company on conditions about which a dispute arose, and the Company sought to assess the land to rent, and the tenants claimed to hold it free. It was held by the High Court that in the case of one plot on which a tenant had agreed to dig wells and

Water drawn by the tenants should be taken as a fair consideration and as a set-off against rent of land where wells have been dug by a particular tenant.

¹ "The Permanent Settlement as compact by which the zemindari engages on his part to pay a fixed amount of revenue to the estate, and the estate, on its part, guarantees to the zemindar, by means of its judicial and fiscal administration, the integrity of the assets from which that revenue is derived, and which, in fact, constitutes the Government's own security for the realization of its revenue. The declarations to the zemindars and other proprietors of land that the *jumma* assessed upon their lands is fixed for ever (sec. 3, Reg. I, 1793), carries with it, by necessary implication, a rule of the nature laid down in sec. 10, Reg. XIX, 1793."

without any express declaration, such as that contained in sec. 10, grants by unauthorized persons, alienating the revenue of an estate would have been void as against Government and all persons who derived title through Government, and that Government guaranteed to the zemindar the integrity of the assets upon the basis of which the Permanent Settlement of their estate was made, and the zemindars should be entitled to the rents of all lands in respect of which they engaged to pay revenue. It did not mean that the Government guaranteed to the zemindars that they might repudiate their own grants or those of their ancestors." 9 W. R., pp. 43-44.

The learned Chief Justice took this passage to mean "that, even

had done so, the water which the villagers on the Company's estate drew from the said wells, was in the nature of a fair consideration for the land, and that though the land was assessable to rent the Company could not assess it so long as the villagers were supplied with water. In regard to another plot, however, in which some temples had been erected, it was held that the temples did not in any way further the objects of the Company and could not be treated as fair consideration, and that the Company could assess the plot.

The learned Judge by whom the judgment of the Court was delivered observed :

"In the Full Bench case of *Peezuruddin v. Mudhoo-sudun Pal Chowdhury*, 2 W. R., 15, it was held that land given for the purpose of digging the tank which was to supply the neighbourhood with water¹ although not charged with rent was not a lakheraj grant, because the water thus given for the general benefit was in the nature of a rent reserved, and that a zemindar had the power to make such a grant.

"I see the little difference between the principle of that case and the present, and that, I am inclined to say that so far as the western plot is concerned, the Company has no right to assess or demand a money-rent so long as the defendants keep up and distribute to all comers the usual supply of water."

It will not be out of place here to draw your attention to the provisions of sec. 37 of Act XI of 1859, which runs as follows :—

"XXXVII. The purchaser of an entire estate in the permanently settled districts of Bengal, Behar and Orissa, sold under this Act for the recovery of arrear due on account of the same shall acquire the estate free

Rights of a purchaser of a permanently settled estate sold for its own arrears.

¹ 25 W. R., p. 245.

from all incumbrances which may have been imposed upon it after the time of settlement and shall be entitled to avoid and annul all under-tenures and forthwith to eject all under-tenants with the following exceptions :—

* * * *

“ *Fourthly*.—Leases of lands whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or whereon gardens, plantations, *tanks*, *wells*, canals, *places of worship*, or burning or burying grounds have been made, or wherein mines have been sunk.

“ And such a purchaser as is aforesaid shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, and if the same shall not have been held at a fixed rent, equal to the rent of good arable land, for a term exceeding twelve years ; but not otherwise.

“ Provided always that nothing in this section contained shall be construed to entitle any such
Proviso. purchaser as aforesaid to eject any ryot having a right of occupancy at fixed rent, or at a rent assessable according to fixed rules under the law in force, or to enhance the rent of any such ryot otherwise than in the manner prescribed by such laws, or otherwise than the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.”

CHAPTER IX.

(Lecture XI.)

ON THE PLANTING OF TREES.

Utility of planting groves and trees, 1; Texts laying down the religious merit in planting trees, 2; analogy between sons begotten by a man and trees planted by him and their respective religious efficacies shown from *shastric* texts, 3; affiliation of trees, 4.—Great religious merit of a gift of land for making a garden, 5.—*Shastric* and secular punishment for protection of trees, 6.—Filthy uses of gardens interdicted for ensuring their cleanliness, 7.—The above texts applicable to trees in general except *vibhaktaka*, *Vakula* and *tala*, 8.—Great religious merit in the gift of fruit-trees to gods or Bráhmins, 9.—Special religious efficacy in certain particular grouping of plants, 10.—Awe inspired by majestic trees in primitive minds, 11.—The speciality of the trees of the fig tribe, 12; the ceremony of *Vriksho-pratistha* or consecration of trees, 13.—Expiation for improper attacks on trees in the previous existence, 14.—Sanctity of the *arvatika* trees, 15.—Sanctity of the *vilva* trees, 16.—Account of ceremony of affiliation of trees, 17.—Sanctity of the *tulsi* trees and its marriage with Vishnu, 18.

Planting
groves and
trees.

1. HAVING dwelt upon the subject of water-reservoirs, we are introduced by a natural connection to the subject of planting groves and trees. In a tropical climate the relation between the two is obvious. Trees are necessary in order to afford shade and shelter to the traveller who slakes his thirst at the pool of water, and the vicinity of water is necessary to secure proper growth and nourishment to the trees. Even a single tree planted by the side of a well or tank—one of the fig tribe for instance—would afford immense relief to passers-by. From an æsthetic view, also the vicinity of foliage is wanted to complete the beauty of the landscape. This latter view is uppermost in the mind of *Varáha Mihira*.¹

¹ *Brihat Samhitá*. Adhy. 55, sl. 1, Bib. Ind., p. 302, J. R. A. S., N. S., Vol. VI, p. 312.

"Considering that water-reservoirs without shade on the margin are not lovely, one ought to have gardens laid out on the banks of the water."

Besides shade, the flowers and fruits of trees are acceptable products to men and welcome additions to domestic economy for use or ornament. The *Mahābhārata*¹ speaks of the fame acquired in this world by tree-planting.

2. The secular benefits conferred by trees have also been connected with religious merit by the Hindus. ^{Religious merit in planting trees.} Certain texts declare generally the virtue of tree-planting.

Mahābhārata.²—"The planting of trees is productive of religious merit in the next world. The planter of trees procures the salvation of his deceased ancestors as well as those of the succeeding future generation, therefore a man should plant trees."

Skanda Purāna.³—"He who plants by the roadside a tree producing shade, flowers and fruit releases from sin his ancestors in heaven."

Other texts are more specific in allocating religious merit between the different functions of trees.

Vishnu.⁴—"For (the benefit of) the giver, the trees gladden the gods by blossoms ; guests by fruits ; travellers by shade ; the manes with the water (trickling down from their leaves) when it rains."

¹ कौर्णिक मानवे लोके ।

quoted in Hemādri, Dānakhandā, Adhy. 13, Bib. Ind., p. 1030.

² Quoted in Hemādri, Dānakhandā, Adhy. 13, Bib. Ind. p. 1030.

³ यस्य दृष्टं प्रकुर्वते द्वाद्यापुष्प-
पक्षीपमम् ।

पथिद्विजे नरः पापात् संकारयति
वे पिबन् ॥

Quoted in Hemādri, Adhy. 13, Bib. Ind., p. 1033.

⁴ Institutes, XCI, 5-8 ; also quoted in Hemādri, Dānakhandā, Adhy. 13, Bib. Ind., p. 1030. Cf. translation in Müller S. B. E., Vol. VII, p. 270.

Mahābhārata.¹—"The trees honor the gods with flowers; the manes with (their) fruit; the guests by shade. The *kinnaras*, serpents, *rākshasas*, gods, *gandharvas* and men, as well as *maharshis* take shelter of trees."

Bhaviṣyat Purāna.²—"Animated beings are satisfied from their branches, bark and sprouts. Trees of beauteous shape, covered with flowers, satisfy the gods by flowers and the manes by fruits. Blessed be the trees for their suppliants never go fruitless."

Salvation in
planting fruit
and flower
trees.

3. The simile which likens the generation of human beings to the sowing of seed in the womb of the earth, is one perfectly familiar to the Hindu sages,³ and also prevails in the early literature of other nations. The Hindus further considered trees to be conscious and sentient beings. Thus Menu:⁴—"These (plants, &c.) encircled with multi-form darkness, by reason of past actions, have internal consciousness and are sensible of pleasure and pain."

Putting these two sets of ideas together, it is quite easy to comprehend how a tree should come to be considered

¹ पुष्पेः सुरमयान् हृत्वा फलेष्वपि
तथा पिबन् ।

ह्ययथा चातिद्यौन् तात पूजयन्ति
महीरुहाः ॥

किन्नरीरगरक्षांसि देवगन्धर्व-
मानवाः ।

तथा महर्षयश्चैव संशयन्ति मही-
रुहान् ॥

Quoted in Hemādri, Dānakhandā,
Adhy. 13, Bib. Ind., p. 1030.

² प्राणिनः त्रीक्षयन्त्यस्माच्छा-
वस्कलपञ्चवैः ।

पुष्पच्छदाः सुतनवः पुष्पैर्दिवान् फलेः
पिबन् ॥

पुष्प पत्र-फल-च्छायां सुख-वस्कल-
दायभिः ।

धन्या महीरुहा वेषां विफला यान्ति
मार्थिनः ॥

Quoted in Hemādri, Dānakhandā,
Adhy. 13, Bib. Ind., p. 1032.

³ Menu, IX, 32-43.

⁴ Institutes Adhyaya I, sl. 49-50. In further development of this idea, the *Matsya Sūkta*, 27th patala (pp. 26-27), gives an elaborate list of the respective vegetable growths assumed by transmigrated souls as punishments for particular sins. For our present purposes it will be only sufficient to mention that the abductor of a *devadasi* is born as a *karnikāra* and the destroyer of temples, tanks, &c., as a *dhātaki*.

the offspring of the person who planted it ; and the religious merit conferred on the planter by the tree, furnished also a parallel to the conception aforesaid.

Mahábhārata.¹—"Trees producing flowers and fruits do, like sons, gratify men in this world and conduce like sons to salvation in the next. Therefore, should trees be planted in (the banks of) tanks by men desirous of prosperity."

Padma Purána.²—"Trees discharge in this world the duty of sons for those who are sonless. They bestow on those who have planted them the pleasures derived from *tarpana* and the rest. With assiduity, O king, plant a *pippala* tree ; that single tree will discharge the duties of a thousand sons."

Bhaviṣyat Purána.³—"Five born in the ground (trees) are better than ten (sons) born in the house, for (the former) perform the *tarpana* of their father by leaves, flowers, fruits and blossoms. Verily, a way-side tree (planted) where men take their rest is better (for spiritual welfare) than numerous sons born, without (acquiring) piety or wealth. * * * * * Human sons perform a *śrāddha* at the end of a year. Trees provide excellent nourishment every day (for the author of their being). That (merit) which is achieved by an umbrageous tree (planted) on the roadside resorted (to by travellers), cannot be achieved by the *Agnihotra* sacrifice so difficult to be performed by the son that is born of woman. * * * * * The man who has planted a tree, is ever accompanied by a servant and a wife, is the giver of continual gifts and offers a perpetual sacrifice (*Yajna*)."

¹ Quoted in Hemádri, Dána-khanda, Adhy. 13, Bib. Ind., p. 1030.

² Quoted in Hemádri, Dána-

khanda, Adhy. 13, Bib. Ind., p. 1030.

³ Quoted in Hemádri, Dána-khanda, Adhy. 13, Bib. Ind., p. 1032.

Affiliation of trees.

4. A further development of these ideas led to a curious custom of affiliation of trees which will be described later on. (See sec. 17 of this chapter.)

The last stage in the conception would seem to be the allotment of trees planted by one to be his progeny of flesh and blood in subsequent transmigrations.

Vishnu.¹—"He who plants trees will have those trees for his sons in a future existence."

Gift of land for making a garden.

5. The gift of land for the purpose of making a garden procures to the donor, according to the *Vishnu Dharmottara*,² bliss in the regions of *Marut* (the Wind-God).

Punishment provided for protection of trees.

6. In the passages above cited the advantages of tree-planting have been enumerated. Punishments have at the same time been provided for the protection of institutions so eminently beneficial. In harmony with the idea already explained that plants are but transmigrated human beings retaining an inner consciousness and sensibility to pain and pleasure, the cutting of the same is enumerated in the *śāstras* as one of the forms of murder (*himsā*) and provided for accordingly. A text quoted by *Kulluka Bhatta*³ in commenting on a passage in the *Menu Samhita*, mentions the felling of green wood for fuel as one of the *upapātakas* or minor sins ; thus implying that the proper course is to wait for the tree to die a natural death. The sanctity of vegetable life is further protected by the following texts :—

Vishnu.⁴—"For cutting (unawares?) trees yielding fruit (such as the bread fruit or mango trees), shrubs, creeping

¹ Institutes XCI, 4 Müller's S. B. E., Vol. VII, p. 270 ; also quoted by Hemādri in *Dānakhandā*, Adhy. 13, Bib. Ind., p. 1030.

² चाराममुनिं इत्या च मावत् क्षोक्कमात्रात् ।

Quoted in Hemādri, *Dānakhandā*, Adhy. 7, Bib. Ind., p. 502.

³ इत्यनार्थमग्रज्ज्ञानी कुमावामव-
पातनमित्यादिउपपातकमध्ये पठितव्य
गुरुप्रायश्चित्ताभिधानात्

Comm. Menu, XI, 143.

⁴ Institutes L, 48, Müller's S. B. E., Vol. VII, p. 161.

or climbing plants, or plants yielding blossoms (such as the jasmine tree), he must mutter a Vedic text (the *Gâyatri*) a hundred times."

Menu.¹—"For cutting fruit-trees, shrubs, creepers, lianas or flowering plants, one hundred *rikas* must be muttered.

"If a man destroys for no good purpose plants produced by cultivation, or such as spontaneously spring up in the forest, he shall attend a cow during one day, subsisting on milk alone."

Secular penalties have also been imposed on those who violated these injunctions, although apparently these are imposed only in case of trespass on another's property. A man committing ravages upon plants of his own would to all appearances be left to the devices of his own conscience.

Vishnu.²—"A feller of trees yielding fruit (shall pay) the highest amercement. A feller of trees yielding blossoms only (shall pay) the second amercement. He who cuts creepers, shrubs or climbing plants (shall pay) a hundred *karshápanas*. He who cuts grass (shall pay) one *karshápana*. And all such offenders (shall make good) to the owners (of the trees or plants cut down by them) the revenue which they yield."

Menu.³—"According to the usefulness of the several (kinds of) trees a fine must be inflicted for injuring them; that is the settled rule."

7. In order to maintain the cleanliness of gardens, the Hindu sages interdicted their use for filthy purposes. Thus *Vishnu*⁴ prohibits the use of such a place or its vicinity for answering a call of nature; *Harita*⁵ prohibits resort to

Provisions for the maintenance of the cleanliness of gardens.

¹ Institutes XI, 143, 145.

² Institutes V, 55-59; also quoted by Kulluka in Comm. *Menu*, VIII, 285.

³ Institutes VIII, 285.

⁴ Institutes LX, 14, S. B. E.,

Vol. VII, p. 195; also quoted in the *आचारद्वय*, Leaf 2/2, Bomb. Ed.

⁵ न यन्निधानं दृष्टवानप्यङ्गात्।

Quoted in *आचारद्वय*, Leafs 2/2 3/1.

trees used in sacrifices; *Apastamba*¹ directs the avoidance of the shade of a tree where travellers rest; and *Yama*² prohibits in the same connection the shade and roots of trees in general.

The secular sanction for the above sanitary prohibitions is contained in the text of *Vishnu*³ which imposes on the delinquent a fine of a hundred *panas* and the duty of removing the filth.

Of trees in general.

8. The texts which we have considered thus far deal for the most part with trees in general, and not with any particular trees. The *Padma Purāna*,⁴ however, contains an exhaustive enumeration of the consequences of planting trees of particular descriptions. For the most part the results are promised to be good except in the cases of the *Vibhītaka* which portends transmigration into a demon, the *vakula* which creates fear from thieves, and the *tāla* which destroys issue.

Religious merit from gift of fruit trees.

9. The religious merit accruing from the gift of fruit trees to the gods or Brahmins is extolled in the following texts. The texts⁵ of the *Vishnu Samhita*, *Mahābhārata* and *Bhaviṣyat Purāna*, already cited mostly dwell on the merits of the physical existence of the tree independently of its ownership. It is possible for the rewards there mentioned to be earned by the planter without parting with his right of property in the tree itself. The texts which I propose now to deal, treat specially of trees as objects of gift either to particular gods or to holy Brāhmins.

¹ Institutes I, 11, 30, 16, S. B. E., Vol. II, p. 93; also quoted in *आचारार्द्धम्*, Leaf 3/1.

² Quoted in the *आचारार्द्धम्*, Leaf 2/2.

³ Institutes V, 106, 107, S. B. E., Vol. VII, p. 34.

⁴ Quoted in Hemādri, *Dāna-khanda*, Adhy. 13, Bib. Ind., p. 1031.

⁵ *Ante*, p. 2.

Nandi Purána.¹—"The man who gives a fruit-tree with a view to religion, attains the abode of *Varuna*, with his soul gratified by the fulfilment of all desires."

Mahábhárata.²—"He who gives a fruit-bearing tree to the gods or to the Bráhmíns, sports like a god, for time without end in the mansions of those who drink nectar, served by celestial nymphs and accompanied by his progenitors." This is followed by the separate enumeration of the rewards earned by the gift of particular trees, the list not containing the trees prohibited for planting by the *Padma Purána*, in the text³ above cited. The passage concludes with the general declaration that by the gift of other trees producing flowers and fruit, the donor attains supreme power and prosperity.⁴

According to the *Nandi Purána* ⁵ "the man who makes a pleasure-garden (for *Shiva*) full of flowers, furnished with a reservoir of water, protected (on all sides) and possessed of abundance of fruit, sojourns to the abode of *Shiva* and dwells there for three *Yugas*."

10. Special religious efficacy is ascribed to certain grouping of plants. One of these is called the *panch-ámra*, although curiously enough the *ámra* mango is not after all included in the composition. According to the

Special religious efficacy in the grouping of plants.

¹ फलवृक्षं यो दद्यात्कर्तुं हि मनुजः ।

स सर्वकामलप्ताय गच्छेद्दण्ड-मन्दिरम् ॥

Quoted in Hemádri, Dánakhanda, Adhy. 13, Bib. Ind., p. 1034.

² देवेभ्योऽथ द्विजातिभ्यो यो दद्यात् फलदं द्रुमम् ।

स पौष्ट्यमुजां लोके खेयमानो वयोवभिः ॥

प्रीदते देवत्कालमननं पूर्वं-जान्तिनः ॥

Quoted in Hemádri, Danakhanda, Adhy. 13, Bib. Ind., p. 1034.

³ Ante, p. 8.

⁴ अन्येषामपि वृक्षाणां सुमनः फलशालिनाम् ।

प्रदानतो नरो याति परमैश्वर्य-सम्पदम् ॥

Quoted in Hemádri as above.

⁵ Quoted in Hemádri, Dána-khanda, Adhy. 13, Bib. Ind., p. 1041.

*Mahābhārata*¹ the *pañchāmra* grove consists of specific numbers of the (1) *ashwattha*, (2) *nim*, (3) *vata*, (4) tamarind, (5) *kapitha*, (6) *vilwa* and (7) *āmalaki* trees, and the planter of such a grove never sees hell. Another version¹ of the same text makes the grove to consist of specified numbers of the (1) *ashwattha*, (2) *nim*, (3) *champaca*, (4) *pesara*, (5) palm and (6) cocoanut trees.

The last reading is adopted in the *Tiṭhitatva*² without mentioning the name of the work quoted from, and in the same connection Raghunandana quotes a text of the *Varāha Purāna*³ which makes the *pañchāmra* to consist of (1) *ashwattha*, (2) *nim*, (3) *vata*, (4) *Jāti*, (5) pomegranate and (6) sweetlime. All the readings, however, are open to the remark that they include more than five elements in the composition.

Another sacred group is known by the name of the *pañc avati*. It consists, according to the *Skanda Purāna*,⁴ of the (1) *aswattha*, (2) *vilwa*, (3) *vata*, (4) *dhātri* (*āmlaki*) and (5) *asoka*; these are to be planted to the east, north, west, south and south-east respectively of a *vedi* or raised in the middle, four cubits in size and of beautiful shape; when the trees have grown for five years, the place has to be consecrated and religious austerities practised on such a spot are fruitful of endless rewards.

A bigger type of this sacred grove is described in the same work, under the name of *Vrihat-Pancha-vati*, as composed of a (1) *vilwa* tree placed in the centre, single specimens of the (2) *vilwa āmalaki* and (3) *ashwattha* in the four cardinal directions, a *vata* tree at each of the four corners, and a circle of twenty-five *asoka* trees surrounding the whole; the maker acquires the prowess of Indra;

¹ Quoted in Hemādri, *Dānakhaṇḍa*, Adhy. 13, p. 1032, and note.

² Quoted in *संस्कृतसूत्रम्*, See पञ्चाव, p. 2065.

³ Quoted in *प्राज्ञतोषिणी*, pp. 381-2.

he is master of incantations in this world and obtains salvation in the next.

11. The mind of primitive man was undoubtedly moved with awe at the majestic monarchs of the forest which towered high their heads over the surrounding vegetation. The *Vanaspatis* or 'Lords of the Forest,' have been the objects of Hindu homage from the most ancient times.

Awe inspired
by majestic
trees.

The *Satapatha Bráhmaṇa*¹ contains directions as to the *Vanaspati homa* or oblation to fire in honor of 'the Lord of the Forest' and identifies him with *Soma*.

The solitude of the forest, personified as the goddess *Aranyani*, is the subject of the following hymn in the *Rig Veda* (X, 146) :—

[Muir's Sanskrit Texts, Vol. V, p. 423.]

- "1. Thou seemest, goddess, here to stray,
Forlorn among these trackless wood,
These dark and dreary solitudes.
Why dost thou not inquire the way
That leads to cheerful human haunts?
Is there nought here thy courage daunts?
- "5. Herself this goddess does not slay,
Although she nurtures murderous beasts :
On luscious fruits the traveller feasts,
Supplied by her and goes his way.
- "6. Rich scented, fragrant, full of flowers,
Her realm with various food is filled ;
For though by hinds she is not tilled,
She drinks in sap from heavenly showers."

12. The trees of the fig tribe by the vigor of their growth, their abundance of fruit and thickness of shade, attracted early attention. As early as the Sutra period, the *ashwattha* had been placed under the special guardianship of Aditya, the *plaksha* of Yama, the *vata* of Varuna,

Trees of the
fig tribe.

¹ III, 8, 3, 33, S. B. E., Vol. XXVI, p. 208; also IV, 5, 2, 11; ditto, p. 395.

and the *udumbara* of *Prajapati*.¹ We have observed in connection with the rules of *vastu vidyá* that these trees are auspicious in certain directions and of evil omen in others. Similarly we find it laid down in the *Vishnu Dharmottara*² that in a garden, the *plaksha* is auspicious to the north, the *vata* to the east, the *udumvara* to the south, and the *ashvattha* to the west; they are not desirable if growing in the south, &c., i.e., contrary to those respectively indicated above to be auspicious. The same treatise directs thorny trees to be placed at a distance in gardens, a rule founded on obvious considerations of convenience, and to be compared with the directions in the *Grihya Sūtras*³ for the selection of a building site free from such or their eradication if existing thereupon.

According to the *Matsya Purāna*⁴ in a pleasure-garden the fruit-trees should be placed to the east; the milky trees to the west; to the south a water-reservoir graces with the lotus; *nalas* and *tālas* to the north.

A garden if attached to a house is to be placed on its left side on the authority of the *Vishnu Dharmottara*.⁵

The ceremony
of *pratishthā*
or consecra-
tion.

13. The ceremony of *pratishthā* or consecration for trees and groves is described in the *Matsya Purāna*⁶ to be in its preliminaries the same as that already described for water-reservoirs. The erection of the *mandapa*, the appointment of priests and the collection of materials is the same. The trees which are the subject

¹ *Gobhila Grihya Sūtra*, IV, 7, 24, Bib. Ind., p. 713.

² Quoted in Hemādri, *Dānakhanda*, Adhy. 13, Bib. Ind., p. 1041.

³ *Gobhila*, IV, 7, 4, Bib. Ind., p. 707, *Ashwalayana* II, 7, 5, Bib. Ind., p. 143.

⁴ Quoted in *हरिभक्तिविलास* p. 714.

⁵ Quoted in Hemādri, *Dānakhanda* 13, Bib. Ind., p. 1041.

⁶ Quoted in Hemādri, *Dānakhanda*, Adhy. 13, Bib. Ind., p. 1048. The same directions also occur in the *Parishishika* of *Ashvalayana Grihya Sūtra*, “*आरामेष्वयं विशेषकु*,” &c. See Bib. Ind., *Ashvalayana Grihya Sūtra*, p. 344.

of the ceremony are to be irrigated with holy water, beautified with rice-flour and *alaktaka*, adorned with garlands and covered with cloths. The ear-boring ceremony is then to be performed for each with a golden needle and collyrium applied (as if to their eyes) with a golden pencil; and imitation fruits of silver placed upon the platform at the foot of each tree. A *kalasa* properly filled is to be installed for each, and *homas* offered for Indra and the other *Lokapálas* or guardians of the quarters of the globe and also in honour of 'Lord of the Forest' *Vanaspati*, of which mention has already been made, and which is specially introduced because of the trees. Then a milch-cow, covered with white cloths, ornamented with gold, specially in her horns, and accompanied by a milking vessel of bell-metal, is to be released in the midst of the trees, with her face to the north, so that naturally she proceeds in that direction. The worshipper then is bathed by the priests from the auspicious waters of the installed water-pots to the accompaniment of music and auspicious songs. Having so bathed and attired himself in white cloths, the worshipper honours the priests with appropriate presents. The ground is sprinkled for four days with milk and a *homa* performed with *ghee*, barley and black sesamum. On the fourth day there is held a great festival and presents again offered to the priest. He who performs the *vrikshotsava* or 'Tree-festival,' according to the above rule, has all his desires gratified and enjoys eternal exaltation. The man who has consecrated even a single tree, dwells in heaven till three *ayutas* of Indra. He procures the salvation of past and future generations, and obtains final emancipation from which there is no return.

14. In the *shástras* certain diseases are ascribed to improper attacks upon trees committed in a previous

Expiation for
improper
attacks on

trees in the
previous exist-
ence.

existence, and the expiation laid down for such sins consists of making metallic images of particular trees and bestowing them upon Brahmins after proper worship, &c. Gifts of this kind are described in the *Dánakhandā*¹ of Hemádri for *ashwattha*, *vata* and mango trees.

Ashwattha
trees.

15. We have already seen that in the *Ghobhila Grihya Sutra* the *ashwattha* is described as a tree presided over by *Aditya*. The latter divinity is identified by *Yáska* with *Vishnu*.² In later days, therefore, the *ashwattha* came to be treated as a tree specially sacred to Vishnu, and so Krishna declares himself in the *Bhagavat Gita*³ to be the *ashwattha* amongst all trees. To plant an *ashwattha* tree is considered an act of piety and to destroy one by cutting a great sin.

Vilwa trees.

16. The *vilwa* tree is sacred to Siva, and it is called the *Sri-briksha*, a name whereby hangs the tale of its origin. The legend is thus given in the *Yogini-tantra*.⁴ Of the two wives of Vishnu, namely, Sri (Lakshmi) and Saraswati, the god was particularly fond of Saraswati and neglected her rival. Weighed with this sorrow the neglected consort went to the temple of Siva in Sri-Saila and practised severe austerities in solitude. When this did not effect the propitiation of Siva, the goddess transformed herself into a tree and continuously worshipped the emblem of Siva with the leaves, flowers, and fruit produced therefrom. Such assiduity for a crore of years procured her the favour

¹ Hemádri, Bib. Ind., pp. 1035-1041.

² Muir's Sanskrit Texts, Vol. IV, pp. 64-65.

³ Adhy X.

⁴ *वृक्षतः सर्ववृक्षाणां*

⁵ *Purvakhanda*, 5th pátala.

Quoted in *प्रायतोषिणी*, p. 380.

“वे च पादादुराचारा जीतव्येदे-
कारिणः ।

वेऽय पाप्मादिनरके पर्यन्ते ब्रह्मचो-
दिनम् ॥

वृक्षाखे जीवमानासु ब्रह्मज्ञाः
कोकिता मुनिः ॥

तस्मिन् देशे भयं नित्यं राजानो न
चिरायुषः ।

न च मन्दत्यं लोको यच्च जीव-
न्नेदम् ॥

of Siva, whereby she became the favourite wife of Vishnu. For this reason the goddess always worships Siva assuming the shape of that tree ; and hence the tree is called *Sri-briksha* and it products in every shape highly acceptable to that god.

The *Devi Purāna*¹ threatens the direst consequences for those who cut down this sacred tree.

“Those wicked and vicious people who cut down the *Sri-briksha*, are roasted (or afflicted) in the hills named Páchyā, &c., for the period of a day of Brahmá=12 millions of divine years, each divine day being equal to one mortal year).

“Such persons, though living, are as good as the dead and are stigmatized in this world as murderers of Bráhmans. The country, where a *Sri-briksha* is cut down, has always cause to fear ; its kings do not live long and there is no contentment in this world there.”

17. I now pass to the subject of the ancient practice of affiliation of trees. . . . The following account of this interesting ceremony is to be found in Hemádri.²

Ancient practice of affiliation of trees.

¹ Quoted in Hemádri, Dána-khanda, Adhy. 13, Bib. Ind., p. 1047.

² *Chaturvarga Chintamani-Dánakhanda*, Ch. 13, Bib. Ind., pp. 1050-5.

ये शास्त्रिनः शिखरिणां शिरसि
विभूषा

ये नन्दनादिषु वनेषु कृतप्रतिष्ठाः ।
ये कामदाः सुरमरीरजकिन्नरानां
तेऽनेन तस्य दुरितानिहरा भवन्तु ॥
एवे द्विजा विधिवद्बभूवुः कृतशः
यस्मात्प्रयावपि हिमदौधितिरक्त-
रक्षः ।

मं हृत्पुत्र परिकल्पनयाधृतोऽपि
काष्ठं सदैवभवता मम पुत्रकाष्ठम् ॥”

ब्रह्मवैवर्तपुराणम् ।

“आत्मादत्तां सन्धवसि हृदयादधि
जायसे ।

आत्मा वै पुत्रम.मासि सजीव मरदः
मृतम् ॥”

ब्रह्मवैवर्तपुराणम् ।

“पुत्रेविनाशुभफलः न भवेत्प्राणां
दुष्पुत्रकैरपि तद्योभयलोकनाशः ।
एतद्विचार्य दुधिया परिपाक्यष्टकान्
यत्नेन वेदविधिना परिकल्प-
नीयाः ॥”

“अनेन विधिना यस्तु मृत्नीता
तत्पुत्रकः ।

पितृणां निरयस्यानां सधुधार-
स वर्धति ॥”

स्कन्दपुराणम् ।

The *Matsya Purána* has declared : A tank is equal to ten wells, a tree is equal to ten tanks ; ten trees are equal to a son, and ten sons are equal to a tree. And the *Nandi Purána* ordains, that one, who adopts a tree as his son before a fire, according to the rules laid down for the purpose, is absolved from all heinous sins, releases his three generations from the hills, and goes (after death) to the auspicious regions of Brahmá. The preliminaries of the adoption ceremony are narrated at length in the *Skanda Purána*, the most important point of which is the obtaining of the sanction of holy Bráhmanas versed in the Vedas. The ceremonies for accomplishing the adoption are given at length in the *Brahma Vaivarta Purána*, the chief features of which are, the investiture of the tree with clothes, jewels and scents, the worship of *Indra* and other *Lokapálas*, the sacrifice to the planets, the worship of *Mátrikas*, the feeding of Bráhmanas and making rich gifts to them, and the performance of the *Sanskáras* usually observed in the case of a male child, viz., the cutting of the navel, the naming, the first feeding of rice the tonsure ceremony, the investiture with the sacred thread and even marriage. The ceremonies are concluded with the following hymn of benediction by the adopter :—

“The trees that adorn the mountain tops, those that are planted in the Nandana and other gardens of heavens those that give what is wished by the gods, men, serpent, or *kinnaras*,—let them by this (incantation) drive away the sin and sorrow of this one.

“These Bráhmanas, who have been offered oblations and have accepted them, and the yonder moon, witness that, O tree ! you have been adopted by me as my son. You should ever perform your duties as my son.¹

“Born of every limb (of mine) and born of my heart, you are my own self, though son in name: may you live for a hundred years.”

Then follows more bestowals of gifts to Bráhmanas, presents to the planter of the tree, feasts to the poor and orphans, and general merry-making.

The policy of adopting a tree as son is thus approved: “No good can result to men without sons, but present and after-life are both destroyed by evil sons. Therefore, wise men, considering this, should carefully nourish plants and adopt them by the rules laid down in the Vedas.”¹

The tree-son adopted under such rules is said to shed a stream of honey on the adoptive ancestors in hell.²

As to the selection of a plant, it is directed that one with thick foliage but soft leaves, capable of bearing cold, wind, and the sun, and of tender age should be selected. One with a feminine name, thorny, crooked, eaten by worms, or having hollows, is to be avoided.

18. The great sanctity attached to the planting and *Tulasi trees*, worship of *Tulasi* trees by *Vaishnavas* is well-known to require special comments thereon. Under this head, Gopalbhatta³ quotes many slokas from the *Skanda Purána*, *Nasáda* and *Agastya Samhitas*. It will be sufficient for our purposes here to note, that the plucking of the *Tulasi* leaves is prohibited on the 12th days of the moon, and a text from *Kárttika Máhátmya* is quoted to authorise the plucking of its leaves for the purposes of the worship of gods.⁴ Gopalbhatta also alludes to a ceremony known

¹ ब्रह्मवैवर्तपुराणं।

इन्दुसूयेन दुष्कृतं भवार्थेन तुलसि

² ब्रह्मवैवर्तपुराणं।

च ॥”

³ See श्रीवृत्तिभक्तिविद्यास, pp.188-93.

⁴ See

श्रीवृत्तिभक्तिविद्यास,

देवार्थे तुलसीवेदो होमार्थं चाम-
भाष्ये ।

p. 116.

as the marriage of *Tulasi* with *Vishnu*, an act of great religious merit to the *Vaishnavas*. The details of the ceremony are to be found in *Vasishthás*, texts quoted by Gopalbhatta. The *pratishthá* or instituting ceremony of a *Tulasi* plant is described in the *Vishnu Yámala Tantra*.¹

¹ श्रीवशिष्ठविद्यासु ।

CHAPTER X.

(*Lectures XII and XIII.*)

ON THE GIFT AND DISMISSAL OF SACRED BULLS.

Domestication of animals—horse, bull and cow—by the Aryan people,

1.—Wealth consisted of herds of cattle as shown by passages from the Rig-Veda, 2.—Passages showing beef to be a common article of food, 3; feeling prevalent against beef-eating even in those days, 4; difference of opinion regarding beef-eating, 5; sacred nature of cow's life, 6; importance of bulls, 7; no wrong in trespass by a seed-bull or a consecrated cow, 8; special efficacy of gifts of cows, 9; gifts of imitation cows, 10; ceremony of gift of cows, 11; authorities regarding gift of cows, 12; the *Vrishotsarga* ceremony or the ceremony of consecrating a bull, 13; practice of marking the consecrated bull, 14; no punishment for trespass by a consecrated bull, 15.—Decisions by the different High Courts of the Question whether a consecrated bull is a "*property*," or an "*object*" within the meaning of sec. 295, I. P. C.—*Queen-Empress v. Jamsora*—*Queen-Empress v. Bandhu*—*Queen-Empress v. Nihal*—*Queen-Empress v. Nulla*—*Queen-Empress v. Imam Ali*—*Hakim v. Empress*—*Romesh Chunder Sanyal v. Hiru Mondul*.

1. DR. SCHRUDER in his *Prehistoric Antiquities of the Aryan people*,¹ writing on the subject of cattle, remarks: "When we visit a farm at the present day and observe the friendly nature of the life which goes on there—the horse proudly and obediently bending his neck to the yoke; the cow offering her streaming udder to the milk-maid; the woolly flock going forth to the field, accompanied by their trusty protector, the dog, who comes fawning to his master—the familiar intercourse between man and beast seems so natural that it is scarcely conceivable that things may once have been different."

Domestication
of animals,
specially horse,
bull and cow.

¹ See pp. 259-260.

"And yet in this picture we only see the final result of thousands and thousands of years of work of civilisation. * * * In the civilised states of the old world, indeed, the domestication of animals is lost in the mists of antiquity. Nay, if we go beyond the limits of history and travel back to the time when Semitic tongues and nations were not yet differentiated, we find that the domestication of animals was far advanced * * * Even the Indo-European was a cattle breeder. His herds (Goth. *hairda*, Sans. *Cárdha*) were his wealth (Tae., Germ., c.5), the object for which he fought (Sans. *gávisthi*, "struggle for cows"—"fight"), and the source of his food and clothing. Yet he too must have passed through a lower stage of development. * * The importance of cattle in the primitive age is shown by the existence of a common collective name for it. The Germ. *vich*, O.H. G. *fihu*, Goth. *faihu*, O. P. *peku* (?), are etymologically identical with Lat. *pecus*, Sans. *patu*, Zend. *pasu* ("small cattle" particularly), and go back to a root *paç* (Sans. *pácáyâmi*), which meant "fasten," "capture." * * By far the most important position was occupied by the horned cattle as is shown by the primitive names for the special ages and sexes. (Sans. *Ukshán*, *gó*, *vaçá*, *prshati* "spotted cow," *rshabhâ*, *vṛsha*, *dhenu*, and so on.)

"The cow, which like the bull, is intimately connected with Indo-European mythology, has during her lifetime a double significance. On the one hand, she is the milk giving creature (Sans. *dhénú*, Zend. *gáo daénu*), on the other, she is specially the beast of burden and draught of the primitive age (Sans. *anadváh*). When killed, her flesh supplies food, while the hide is converted into shield, bow-strings, bags, straps, caps, &c."

Wealth consisting of herds of cattle.

2. The Rig-Veda abounds with passages indicating the idea of wealth consisting of herds of cattle, an idea

natural to a pastoral people the most valuable product being the milk. For example, I quote the following :—

“Day by day we invoke the doer of good works for our protection as a good milch-cow for the milking (is called by the milker).”

“Drinker of the *soma* juice, come to our (daily) rites, and drink of the libation; the satisfaction of (thee who art) the bestower of riches, is verily (the cause of) the gift of cattle. That is, if INDRA be satisfied, he will augment the worshipper’s herds).”¹

“Verily the words of INDRA to his worshippers are true, manifold, *cow-conferring*, and to be held in honour; (they are) like a branch (loaded with) ripe (fruit).”²

“I invoke the milch-cow that is easily milked, that the hardy milker may milk her: may Savitri accept this our excellent libation, that his heat may thereby increase: it is for this, verily, that I earnestly invoke him.

“She comes lowing, abounding in rich (products), desiring her calf in her mind: may this cow grant her milk to the Aswins: may she thrive for our great advantage.”³

3. Numerous passages also exist in the Veda pointing to the fact that beef was a common article of food with men, and as such a favourite offering for the gods. Thus Muir speaking of INDRA in the Rig-Veda, says :⁴ “He is also spoken of as eating the flesh of bulls, or buffaloes, at the same time that he drinks the draughts of *Soma* (X. 28, 3, *adrinā te mandinah Indra tūyān sunvanti somān pibasi tvameshām pachanti te vṛishabhān atsi teshām*). Three hundred are mentioned in v. 29, 7f., one hundred in viii 66, 10, and one in (x)C 27, 2.” The following extract from the same author⁵ is also to the point: “The

¹ Wilson’s Rig-Veda, Vol. I, p. 11.

² Ditto ditto, ditto, p. 21.

³ Ditto ditto, Vol. II, p. 136.

Also see p. 140.

⁴ Muir’s Sanskrit Texts, Vol. V, p. 90.

⁵ Ditto ditto, ditto, p. 463.

Beef, a common article of food.

cutting up of flesh, apparently for sacrificial purposes, is mentioned in one place, I, 161, 10 (*Māmsam ekah pimsāti sūnayā bhritan.*) In I, 164, 43, reference is made to the cooking of a bull as being a primeval institution (*Ukhānam prānim apachanta vīrás tāni dhurmāni prathamāni āsan*; comp. X, 27, 2; X, 28, 3. In V, 29, 7; VIII, 12, 8; VIII, 66, 10, mention is made of the gods cooking or eating large numbers of buffaloes. From the fact of these animals being offered in sacrifice, it may perhaps be inferred that they also formed a portion of human food." Muir here refers his readers to the "general note" appended to Sir William Jones' translation; and Menu XI, 60, where killing of a cow is mentioned as a minor sin (*upapātaka*) and also to verses 109, &c., which lay down rules for expiating the sin of slaying a cow. The passage referred to in Sir William Jones' "general note" is an extract from *Mandana ratna Pradīpa*¹ which quotes a text of *Smṛiti* declaring the slaughter of a bull at a sacrifice to be not permissible in the present or Kali age.

Under current of feeling prevailing against beef-eating.

4. From very ancient time, however, an under-current of feeling seems to have set in against beef-eating, based perhaps on utilitarian or æsthetic grounds, regard being had to the utility of the animal to man and the claim to motherhood from the milk which sustained the breeder. Thus, we read in the *Satapatha Brāhmaṇa*:²—

"Let him not eat (the flesh) of either the cow or the ox; for the cow and the ox doubtless support everything here on earth. The gods spoke: 'Verily, the cow and the ox support everything here: Come let us bestow on the cow and the ox whatever vigour belongs to other species (of animals).' Accordingly they bestowed on the cow and the

¹ Work of Sir William Jones, Vol. I, Calcutta Ed., 1874, pp. 353 and 355.

² S. B. E., Vol. XXVI, p. 11.

ox whatever vigour belonged to other species (of animals); and therefore the cow and the ox eat most. Hence were one to eat (the flesh) of an ox or a cow, there would be, as it were, an eating of everything, or, as it were, a going on to the end (or to destruction). Such a one indeed would be likely to be born (again) as a strange being (as one of whom there is) evil report, such as 'he has expelled an embryo from a woman,' 'he has committed a sin,' let him therefore not eat (the flesh) of the cow and the ox. Nevertheless *Yāgñavalkya* said, 'I, for one, eat it, provided that it is tender.'"

5. It is true that a text of *Apastamba*¹ ordains that "the meat of milch-cows and oxen may be eaten," but *Gautama*,² on the other hand, expressly prohibits the eating of the flesh of milch-cows and draught oxen," and later on, Chapter XXII, 18, he says "(the penance for killing) a cow is the same as for (the murder of) a Vaisya."

Difference of opinion regarding the matter.

And notwithstanding the insinuation of *Satapatha Brāhmaṇa*, *Yāgñavalkya*³ in his chapter in expiation of minor sins lays down similar directions for expiating the slaughter of a cow as is to be found in the verses of *Menu* referred to above.

6. The cow's life was considered so sacred in *Gautama*'s time that in battles men cried quarter by calling themselves cows and the cry was respected. "No sin (is committed) by injuring or slaying (foes) in battle, excepting those who have lost their horses, &c., and those who declare themselves to be cows or *Brāhmanas*."⁴

Cow's life considered sacred.

It is rather noteworthy that in the institutes of *Apastamba*, who did not recognise the sanctity of bovine life,

¹ S. B. E., Vol. II, p. 64. *Apastamba*, I, 5, 17, 30.

² Ditto, p. 286, *Gautama*, Ch. XVII, 30.

³ *Yāgñavalkya* III, 263, 264. *Mandalik's* Ed., p. 171.

⁴ *Gautama*, see S. B. E., Vol. II, p. 226 and note.

no trace is to be found of such a custom. He simply says that "the Aryas forbid the slaughter of those who have laid down their arms, of those who (beg for mercy) with flying hair or joined hands, and of fugitives." But even Apastamba¹ has declared that the same penance as for a Sudra must be performed "if a milch-cow or a full grown ox (has been slain), without a reason. ('A reason' for hurting a cow is, according to Hara Dutta, anger, or the desire to obtain meat.)

Importance
attached to
bulls.

7. Bulls for impregnation would be required for preventing the deterioration of the breed in a later period of human progress when the state of society had completely changed from the pastoral to the agricultural. The importance attached to these bulls is exemplified by the rule laid down in the *śāstras* that the bull kept for impregnation should be allotted to the share of the eldest son on partition. This rule is to be found in Gautama,² Chapter XXVIII, verse 5, and is quoted by Colebrooke in his Digest.³ The text is referred to in Dáyabhaga, Chapter II, 37. Colebrooke also quotes a text of Menu,⁴ which declares that, "if there be four wives of a Bráhmaṇa, in the direct order of the classes, and sons be produced by them all," then in a partition among such sons, the bull kept for impregnating cows goes with other things to the Bráhmaṇa son.

Grass for seed-
bulls and cows.

8. *Yāgñavalkya*⁵ absolves the seed-bull (and the consecrated cattle of which I will speak presently) from the consequences of a trespass in green fields. A similar liberty is accorded the owners of bulls and cows for procuring their food. Thus Menu has declared that taking of grass

¹ Apastamba I, 9, 26, 1 S. B. E., Vol. II, p. 83.

² S. B. E., Vol. II, p. 300.

³ Colebrooke's Digest, Vol. II, p. 219, v. 47.

⁴ Colebrooke's Digest, Vol. II, p. 227, v. 60. Menu IX, 150.

⁵ See Mandalik's *Yāgñavalkya*, p. 227; also Colebrooke's Digest, Vol. II, p. 103.

for feeding cows is no theft.¹ According to several commentators the condition is that the things taken were unenclosed. Apastamba lays down the rule that "if seeds ripening in the pod, food for a draught ox (are taken), the owners ought not to forbid it; but adds that "to take even these things in too great a quantity is sinful." So also Gautama, while he throws the responsibility of damage done by cattle on the owner or on the herdsman if it be so attended, makes an exception of the rule in the case of a man's taking grass for a cow.²

9. The gift of cows is one of the approved forms of Gifts of cows. gift according to the *śhāstras* for the acquisition of religious merits.³ Numerous texts declare the efficacy of a gift of cows according to their respective colours and to the accompaniment of calves of the same colours, or in a pregnant state or at the moment of delivery.⁴

10. As in the case of trees, there are directions for the Gifts of imitation cows of various substances. gift of imitation cows of various substances as a means for securing absolution from particular sins or for acquiring particular rewards. Nine forms of such gifts are mentioned in the *Matsya Purāna* quoted in Hemādri, *Dānakhandā*, p. 398. The *Varāha Purāna* speaks of the gift of *Kārpasa-dhenu*,⁵ the *Bhavishyat Purāna* of a *Lavana-dhenu*,⁶ and the *Vishnudharma* of a *Karpurādi-dhenu*.⁷ The gift of a golden cow is described in numerous works. *Vishnu-dharma*, *Agni Purāna*, *Vishwamitra*, *Vridhdha Gautama*, *Banddhayana*, and the *Vayu Purāna* quoted in Hemādri (pp. 436—443).

¹ Menu VIII, 339, Bühler, p. 313.

² Gautama XII, 19, 20 and 28, S. B. E., Vol. II, p. 238.

³ Bhavishyat Purāna, quoted in Hemādri, *Dānakhandā*, p. 397.

⁴ See *Vaitarani-go-dana* and *Ubhayatomukhi-go-dana* in Hemādri, *Dānakhandā*, pp. 473—476.

"वाचस्पत्युना देवा नोः सवा-
सातुपर्व्वन्।

प्रक्षयमानां योगं च दद्यात् भव-
नीमुची।" &c.

⁵ Hemādri, *Dānakhandā*, p. 431.

⁶ Ditto ditto, p. 432.

⁷ Ditto ditto, p. 434.

Ceremony of
gift of cows.

11. A ceremony is described in the Purānas called *devatoddeshena godānum* (देवतोद्देशेन गोदानं) which might at first sight imply a gift of cows for the gods. The texts of the *Linga Purāna* and the *Vishnu-dharma*, quoted in Hemādri (pp. 463-464) would seem to shew that the gift has to be made to a proper Brāhman in the presence of the particular god intended to be propitiated. The gift in that way is made to a Brāhman devoted to the worship of that particular divinity and the propitiation of the god is not by a direct gift made to him, but through the medium of a gift bestowed upon his follower. A text of the *Vahni Purāna* quoted in Hemādri (p. 465) directs the donor to conceive his favourite god in the Brāhman upon whom the cow is intended to be bestowed.

Various
authorities re-
garding gifts
of cows.

12. Gifts of cows directly intended for the service of the gods are separately mentioned in the *śāstras* :—

*Skanda Purāna*¹ :—“He who bestows a milch-cow to (in the name of) Siva or Vishnu, for ablution or as present attains the Supreme Brahma.”

Bhābīshyat Purāna :—“He who bestows a young milch-cow to sun, gives [as it were] the whole world with all the animate and inanimate objects on it.

“The gift for the purpose of ablution or of *homa* of a fine Kapila cow of good breed and giving good milk becomes [in merit equal to] the gift of a hundred cows.

“The man who makes a gift of a cow with proper ornaments, to the Sun-god gets eight times the spiritual benefit of performing an *Aśwamedha* sacrifice.

“He who bestows to Sun-god a cow about to calf attains the merit of making a gift of the whole world comprising the seven islands.

¹ Quoted in Hemādri, *Dānakhanda*, p. 466.

“When the two front legs and the forehead [of the calf] are out, the gift becomes tantamount to the gift of the whole earth with all the mountains and woods and forests on it.”

*The Siva Dharma*¹ :—“[The gift of] ten cows with a bull is called *Brishabhaikadasi*. He who with a pure heart makes such a gift to Siva becomes in strength, enjoyment and other attributes equal to eleven Rudras, and that man of subdued passions enjoys pleasure to his heart's contents in Siva and other *lokas* (worlds).”

*Bhabishyat Purána*² :—“Ten cows with a bull is called *Brishabhaikadashi*. Hear what result obtains the man who makes such a gift to the Sun. He becomes equal to twelve Suns in prowess, is endowed with the attributes of *anima* (subtilty) and enjoys pleasure to his heart's contents in the Solar and other in *lokas* Heaven.”

*Siva Dharmottara*³ :—“Hear what good derives the man, who makes the beautiful gift of one hundred cows with a bull and his twenty-one generations. Mounted on *vimanas* (celestial chariots), resplendent like one crore Suns, and capable of going anywhere and everywhere, attended by numerous vehicles and worshipped by the gods and demons, endowed with the strength of 100 Rudras, like a second Birabhadra, he goes to the beautiful region of Siva and becomes the lord of multitude.”

*Bhabishyat Purána*⁴ :—“Hear O king what good derives the man with his twenty-one generations, who makes a gift of a hundred cows with a bull to the Sun. That king resplendent like ten million Suns and as another Sol goes to the beautiful region of the sun and there enjoys pleasure like the Sun.

¹ Quoted in Hemádri Dána-khanda, p. 466.

² Ditto ditto, p. 467.

³ Quoted in Hemádri, Dána-khanda, p. 467.

⁴ Ditto ditto, pp. 467-468.

“Having had all sorts of enjoyments, he at the time of the destruction of the whole creation casts off his shroud of illusion (body) and enters the orb of the Sun. He becomes omniscient, all Sunlike, he is at rest in himself capable of going everywhere on account of being perfect and shines like the Sun.”

Vishnu Dharmottara :—“He who after passing three nights on the altar, and living three nights on cow’s milk makes a gift of a well-fed cow adorned with gold horns, silver hoofs, and tail of pearls, and covered with a piece of new cloth together with a milk-pallet made of bell-metal and with *dakshina* to a Bráhmán properly robed, and satisfied, and who thereafter lives three nights on cow’s milk, goes to *Sivaloka*.”

“The man, O Bráhmans, who makes gift of a cow in this manner enjoys these best fruits for as many years as the cow has got hairs on her body.”

Vrishotsarga
i.e., ceremony
of consecrating
a bull.

13. The ceremony of consecrating a bull (*vrishotsarga*) forms a part of the *śrāddha* ceremony of the Hindus. Colebrooke has omitted to give a description of this ceremony in his otherwise very fair account of the *śrāddhas* in his essay on the religious ceremonies of the Hindus. This ceremony forms the subject of separate treatises which give the fullest information upon all points. It will be sufficient for our present purposes to state that the ceremony seems to be a survival of the Vedic rite of *gomedha* where the bull is set free instead of being slaughtered.¹ The *rationale* of this consecration is to be

¹ See मधुपर्क *Ashwalayana Grihya Sutra*, pp. 103, 108 and 109; also Colebrooke’s *Essays*, Vol. I, pp. 206-207. Also see अन्न-क्षरणी *Ashwalayana Grihya Sutra*,

pp. 200, 201 and 209. मृगं ! *Ashwalayana Grihya Sutra*, p. 251, &c., and अन्नं ! in p. 260. See हविर्गृह्णः *Ashwalayana Grihya Poristishta*, pp. 331 to 333.

found in the animal's use as a propagator of the breed and that explains the license given to its movements. Thus Menu has declared "that no fine shall be paid for (damage done by) a cow within ten days after her calving by bulls (*kept for impregnation*) and by cattle sacred to the gods, whether they are attended by a herdsman or not."¹ The following explanation occurs in Bühler's Notes: "Bulls," *i.e.*, 'those set at liberty (see VI..LXXXVI) are meant' (Nâr., Kull.), which may be met with near many Indian villages and in many towns. 'Cattle sacred to the gods, *i.e.*, either such are set apart for sacrifices,' or 'such as are dedicated to temples' (Medh.). The other commentators prefer the second application." The same text is quoted by Colebrooke,² but he gives the further explanation by Kullukabhata on the words "attended or unattended" of the text:—"Since even consecrated bulls are kept by herdsman among cows for the sake of impregnating them, it is possible they may be attended by a keeper."

14. The marking of the consecrated bulls is an ancient practice, as will be seen from a text of *Usânas*, quoted by Colebrooke³ in the above connection "*usânar*": "For elephants and horse, no fine is allowed * * * or . . . nor for bulls marked with the token of consecration." "Bulls marked" is explained by *Ratnâkara* as "distinguished by the mark of a trident and the like." "The figure of a trident," says Colebrooke, "is stamped with a hot iron on the right shoulder, and a circle or discus on the left horn of the steer which is dismissed with four heifers at obsequies, and other occasions of mourning; the same marks are made with sanders wood, instead of being stamped with a hot-iron, on a steer dismissed at a marriage or other

The marking
of consecrated
bulls.

¹ Menu VIII, 243. See Bühler, ² Colebrooke's Digest, Vol. II, p. 297 and note. p. 104.

³ Colebrooke's Digest, Vol. II, p. 104.

occasion of rejoicing. The trident betokens the consecration of the bull to RUDRA ; it is not so obvious what is intended by the discus, which is the weapon of *Vishnu* ; for it does not appear that the bull is consecrated to this deity."

Person who is liable for trespass committed by a consecrated bull,

15. But with reference to the texts quoted in para. 12 a question arises, that supposing a fine *could* be imposed, if a trespass by a consecrated bull occurred, who would be the person liable to pay the fine. Such a bull has no human owner, and the liability may be shifted to the original dismitter or a chance keeper or attendant. The following text of *Yāgnavalkya*, quoted by Colebrooke in his Digest, Vol. II, p. 103, and the commentary thereon have an important bearing on the question :—

"YAGNAVALKYA.—A bull, consecrated cattle, a cow which has lately calved, a stray, and other beasts which are not attended by a keeper, should be set free, *for* they are impelled by God and the king."

The *Mitācshara* explains : "Consecrated cattle" to be such as are dismissed in honour of the deity, according to the form for consecrating bulls. These and the others indicated 'should be set free,' *i.e.*, even though they consume a stranger's grain, no fine shall be levied.

"In the *Ratnācara* also, the same exposition is given. Since a fine cannot be imposed for consecrated cattle which have no human owner, the mention of them must be intended for the purpose of illustration. As consecrated cattle occasion no amercement, so bulls and the rest occasion none. This also is noticed in the *Mitācshara*.

"A bull cannot be restrained. Consecrated cattle are beasts dismissed in honour of the deity. As land dedicated to the deity, and the vessels appropriated to worship, are held and kept by the instituted worshipper of the deity ; so, if some person feed with grass or the like, •

cattle consecrated by any man, it might be questioned whether he should be liable to a fine, and since it might be questioned, in the case of a bull dismissed, whether the dismitter be liable to a fine, because he is the remote cause of the trespass, *therefore* it is declared *that no fine shall be imposed*; or it is so declared, on the doubt whether the keeper might be fined for mischief done by consecrated cattle attended by a keeper."

16. The question whether consecrated bull or bulls devoted to the gods are 'property,' and whether they can be considered as 'objects' within the meaning of sec. 295 of the Indian Penal Code, has been the subject of several decisions discussed below :—

Consecrated bull is property, and an object under sec. 295, I. P. C., or not. Authorities regarding the same.

(1) The earliest decision on this point is to be found in *Queen-Empress v. Jameera*,¹ which is referred to in the case of *Queen-Empress v. Nihal* in I. L. R., 9 All., p. 348. It was held in this case by Mr. Justice Brodhurst that the bull was *not property*, for the reason, that a person letting loose the animal, surrendered all rights of property therein.

Queen-Empress v. Jameera.
Queen-Empress v. Nihal.

(2) The next decision is that of *Queen-Empress v. Bandhu*.² "A person was convicted and sentenced under sec. 411 of the Indian Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies."

Queen-Empress v. Bandhu.

The Sessions Judge in affirming the sentence of conviction made the following observation: "It was certainly not the intention of the persons who set the bull at large that any human right of property should be attached to

¹ Weekly Notes, 1884, p. 87.

² I. L. R., 8 All., 51.

it by any one, and the intentions of such persons are respected by general public feeling ; and the bulls so let loose are looked upon as not liable to be converted to use in any way that would interfere with their liberty. I may be straining a point, but I think it may be held that the Hindu public have such an interest in these ' *sānds* ' remaining unmolested and at liberty, as to make them the subjects of a sort of public rights, and so bring them within the meaning of ' property.'"

Mr. Justice Straight, before whom the case came up for revision, " held that the bull was not, at the time of the alleged misappropriation, ' property ' within the meaning of the Indian Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor ; that it was therefore *nullius proprietus* and incapable of larceny being committed in respect of it ; and that the conviction must be set aside."

Queen-Empress
v. Nihal.

(3) The same view was again expressed by Mr. Justice Straight in another case, *Queen-Empress v. Nihal*.¹ This also was a case of conviction under s. 411 of the Indian Penal Code, the subject-matter of the charge being a branded bull set at large, as a pious act, for the benefit of a deceased person. The Magistrate, in convicting the prisoner, observed : " The definition given by Sheo Dial, one of the witnesses for the prosecution, of the rights and interests inherent in the person thus setting at liberty a bull sacred to the memory of a deceased, clearly shows that the act does not of itself involve a renunciation of ownership. The only modification that takes place is that he cannot dispose of it to his own advantage and appropriate it to his own use. From this it is obvious that the original

¹ I. L. R., 9 All., 348.

owner's title is not completely annihilated. He is restricted to the exercise of such rights of ownership only, as would not militate against the special purpose for which the animal was set apart. This being so, the bull, in this case, must be held to have belonged to, and to have been stolen from the possession of, the complainant."

The Sessions Judge affirmed the conviction on the evidence, but Mr. Justice Straight set aside the conviction and referred to Mr. Justice Brodhurst's decision in *Queen-Empress v. Jameera* and his own decision to the same effect in *Queen-Empress v. Bandhu*. This last case, his Lordship observed, had been determined after very full and careful observation. The vakeel for the accused in that case "was good enough to lay before me all the information that was obtainable in reference to the practice and procedure among the Hindus in the matter of dedication or setting loose these bulls upon the death of a relative, and from that information it was beyond doubt that, as understood among men of that religion, the person letting loose the animal, by the act of so doing, surrendered and abandoned all proprietary rights therein. My brother Brodhurst in the case of *Queen-Empress v. Jameera*¹ obviously adopted this view, which I hold to correctly represent the real condition of things." Such a bull was accordingly held not to be "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of secs. 140 and 141 of the Indian Penal Code.

(4) Against the current of the above three Allahabad *Empress v. Nulla*,² decisions, is the Madras decision of *Empress v. Nulla*,² which seeks to make a slight difference in the case of bulls

¹ Weekly Notes, 1884, p. 87.

² I. L. R., 11 Mad., 145.

dedicated to temples. According to Mr. Justice Muttusami Ayyar and Mr. Justice Brandt, a bull dedicated to an idol is not *fera bestia* and therefore *res nullius* simply because it is ordinarily a wandering beast and roams at large free from all control. Their Lordships held that, *primâ facie*, the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership. In commenting upon this decision, Mr. Justice Norris, in his judgment in *Romesh Chunder Sanyal v. Hiru Mondul*,¹ observed that he failed to see anything in this judgment in the least degree impeaching or questioning the correctness of the law laid down by Mr. Justice Straight in *Queen-Empress v. Bandhu*.² Mr. Justice Norris' summary of this Madras case was as follows³:—

“In that case two persons had been convicted of mischief and criminal misappropriation in respect of a bull described as ‘the Kamatchi Amman temple bull.’ On appeal the Sessions Judge, ‘having regard to the principle on which the case of *Queen-Empress v. Bandhu*⁴ was decided, namely, that a bull set at large in accordance with Hindu religious usage, when the original owner abandons all proprietary right in such animal, cannot be the object of larceny, and being of opinion that no material distinction in principle could be drawn between the case of a beast so abandoned and the case of a beast abandoned by its former owner and dedicated or attached to a temple, not, however, without considerable hesitation, held the bull in the latter case to be a *fera bestia*, and as *res nullius* to be incapable of being the object of the offences in respect of which the accused were convicted,” and quashed the conviction. On the case coming before the Court in the exercise of its

¹ I. L. R., 17 Cal., 861.

² See I. L. R., 17 Cal., pp.

³ I. L. R., 8 All., 51.

860-861.

⁴ I. L. R., 8 All., 51.

revisional jurisdiction, the learned Judges, Muttusami Ayyar and Brandt, JJ., said :—

“ We do not think it necessary to interfere in revision, not because we agree with the Sessions Judge that there is no material distinction between the case of an animal, property in which is wholly renounced or abandoned, and allowed, in accordance with religious or superstitious usage, to roam at large free from all control, and that of such an animal so abandoned and at large after dedication to a temple, but because the accused have undergone three months’ rigorous imprisonment for the offences of which they were convicted. We consider there is a material distinction between the two cases * * * *

* * * If on the evidence it appeared that the animal was turned loose after dedication to the temple, and that it was actually or inferentially accepted as so dedicated on behalf of the temple, then though the animal were allowed to be at large free from all control, it would *primâ facie* be the property of the temple.”

The concluding remarks of the same learned Judges indicate “ the principles to which regard should be had in such cases.” Their Lordships¹ observe :—

“ If such animals, in their wanderings at time, trespass on, and do damage to, private property with impunity, it is because superstition induces villagers to regard them with veneration, and to endure the mischief which they commit without seeking redress as of right. If the Sessions Judge’s view of the law were correct, it would seem to follow that the trustee of a temple, who accepted the dedication to the temple of such an animal, would not be responsible for injuries caused, for example, to a child playing in the street by a bull, to his knowledge dangerous or

¹ Muttuswami Ayyar and Brandt, JJ.

habitually mischievous : a proposition on the face of it untenable. Even in the case of a person wholly abandoning an animal, such as a bull, without any precaution taken for its future control, it is not to be assumed that he would be free from liability, civil or criminal, in respect of damage done by such animal."

*Queen-Empress
v. Imam Ali.*

(5) In *Queen-Empress v. Imam Ali and another*,¹ the question was raised whether the word "object" in sec. 295 of the Indian Penal Code included animate objects as a cow. The accused, two Muhammadans, were convicted by the Magistrate of Shahjehanpore for killing cows in a public place frequented by Hindus, as the cow, according to the Magistrate's view, was an 'object held sacred by' the Hindus. The case came up in revision before the Full Bench who held that the word 'object' in sec. 295 applied to inanimate objects only. Sir John Edge, C. J., came to the conclusion that it was intended that the "object" should be one *ejusdem generis* with a place of worship, that is, some inanimate object as an idol, &c. Had a wider meaning been intended, he said he should have expected to find in the definition clause the word "object" defined. But there was no such definition, while the words 'animal,' 'man,' 'woman,' and 'person' were there defined. Justice Straight thought that the words 'destroys,' 'damages or defiles,' having been used in connection with the word 'object,' the former precluded the notion that a cow could come within the definition. Justice Brodhurst thought, if the Legislature intended such to be the case, they would have used a more appropriate language, and such word as "kills, maims or otherwise injures any animal" would have been inserted between the word "any object" and the word "held sacred by any

¹ I. L. R., X All., F. B., p. 150.

class of persons." Justice Tyrell concurred with the Chief Justice, and Justice Mahmood observed that the language of statutes should be construed strictly and in favour of the subject, and the words importing a popular meaning ought to be construed in such a sense. But there was another aspect of the case. The bovine species is not the only class of animal held sacred by the Hindu population of India, and indeed even trees, such as the *pipal*, are included among the objects of worship or veneration by that section of the community ; a state of things which made the task of Judges very serious indeed.

He thought it was not beyond his province as a Judge of the High Court to take judicial notice of the religious history of the Hindus, as also of the Muhammadan ecclesiastical law, in so far, as they bear upon the facts of this case. He then pointed out that sacrifice of a horse or of a cow was allowed in ancient times of the Hindu history. "No doubt with the progress of time the advance of civilization and the development of utilitarian ideas among the people, both these sacrifices fell into disuse, and the cow as the furnisher of milk and the mother of the bovine species (so universally employed in this country for purposes of agriculture) rose from being an object of utility to the footing of sanctity." But this circumstance could not affect the interpretation of the word "object" as it occurs in sec. 295 of the Indian Penal Code. According to Justice Mahmood's opinion, the fact was that Her Majesty's subjects in India having long been accustomed to oppressive methods had not yet advanced to that state of civilization which can appreciate the high ideals of religious toleration and individual liberty which were introduced by the British Government. The learned Judge also thought that difficulties sometimes arose in connection with such matters, which were not due to any defect of the law

but to the inconsiderate and reckless behaviour of the various sections of a public which had not yet learnt to appreciate the blessings of the reforms introduced by British rule. He could not help feeling that the accused had been guilty of imprudent and inconsiderate conduct on their part, and could not conceive that the gentlemanly feelings of any Muhammadan of the better classes would permit, even on the festival of *Id-ul-zoha*, the sacrifice of a cow, in a manner which would offend the religious feelings of their Hindu fellow-subjects and neighbours. But with all that, he was bound to hold that sec. 295 of the Indian Penal Code did not cover this case, and that the convictions were therefore wrong in law, and added that the circumstances of the case require that such matters should be dealt with by municipal regulations for which ample provision is made in our law. He said the facts proved in this case did not constitute a criminal offence within the meaning of the Penal Code, but he did not wish to be understood to lay down any general rule as to whether acts done by Hindus or Muhammadans offensive to each other's religious feelings would not in certain circumstances constitute an offence under the Code.

*Hakim v.
Empress.*

(6) Another case in which it became necessary to consider the effect of sec. 295 of the Penal Code is *Hakim v. Empress*.¹ The material facts of the case will appear from the following extract from the judgments of the Chief Court delivered by Plowden, J.: "We consider that there is in the judgment of the Sessions Judge a finding sufficient to render the conviction sustainable. The charge he considers proved under sec. 295, Indian Penal Code, is not identical with that on which the Magistrate convicted, but it is a charge that the accused destroyed

¹ Punjab Record, 1884, No. 27. See also note in p. 159 of I. L. R., 10 All.

a cow, an object held sacred by the Hindus, with the knowledge that his Hindu neighbours were likely to consider such destruction an insult to their religion."

It was held, "that the word 'object'" as used in this section is not limited to inanimate objects; it is wide enough to include animate objects which are held sacred, as well as idols, relics, or the like. The narrower construction would leave a very grave species of offences unprovided for, which the language employed, when literally construed, is wide enough to include."

7. The latest decision on the point is to be found in the case of *Romesh Chunder Sanyal v. Hiru Mondul*.¹ *Romesh Chunder Sanyal v. Hiru Mondul.* The decision in this case is extremely important as it discusses both classes of cases cited above. The facts of the case were as follows: It appeared that a bull was dedicated and set at large with the usual ceremonies on the occasion of the *Adya Sradha* of a Hindu. The bull still received some attention from the cowherd of the persons who set it at liberty, and was daily fed by him by direction of his employers, and was not used for breeding purposes without their permission being asked. The accused, two Muhammadans, were charged with having killed the bull. It was shown that they did so secretly at night, no Hindu being present, and for the mere sake of its flesh and skin. The Deputy Magistrate discharged the accused under sec. 293 of the Code of Criminal Procedure, holding that sec. 295 of the Indian Penal Code was not applicable in this case. The Advocate-General obtained a rule on the two accused to show cause why the order of the discharge should not be set aside. *Advocate-General obtained a rule.*

The Deputy Legal Remembrancer, in showing cause, observed that the essence of the offence provided for in

Deputy Legal Remembrancer showed cause.

¹ I. L. R., 17 Cal., 852.

sec. 295 is the intention of insulting the religious feelings of any class of persons. In this case no such intention was made out. The High Court had often held that the sections on theft, criminal misappropriation or mischief did not apply in the case of a Brahmini bull which was *nullius inquit*. He relied upon the unreported case of *Dwarka Moochi v. Queen-Empress*,¹ and on the two Allahabad decisions in *Queen-Empress v. Bandhu*² and *Queen-Empress v. Nihal*.³ He urged that the dedication of and letting loose the bull, as shown by the Allahabad cases, necessarily involve the surrender and abandonment of all proprietary rights in it. He also relied upon *Queen-Empress v. Imam Ali* by which it had been held a bull was not an object within the meaning of sec. 295 of the Indian Penal Code.⁴

Advocate-
General in
reply.

The Advocate-General, on the other hand, relied upon the Punjab case of *Hakim v. Empress*,⁵ and the Madras case of *Queen-Empress v. Nulla*.⁶ He observed that Chapter XV of the Penal Code deals with offences relating to religion, and sec. 295 is of a most comprehensive character. There would seem to be no real reason why the destruction of a picture of a monkey which is worshipped should be held to be within the section, while the destruction of a monkey itself, which is equally worshipped should be excluded. The Learned Counsel also contended that the interpretation put on the section by Sir John Edge in the case of *Queen-Empress v. Imam Ali*,⁷ is erroneous, and he has misapplied the doctrine of *ejusdem generis* (see Maxwell on Statutes, 2nd Ed., p. 540). He maintained that the word "destroy" in sec. 295

¹ Criminal motion No. 86 of 1884 decided by McDonell and Field, JJ.

² I. L. R., 8 All., 51.

³ I. L. R., 9 All. 348.

⁴ I. L. R., 10 All., 150.

⁵ Punjab Record, 1884, No. 27.

⁶ I. L. R., 11 Mad., 145.

⁷ I. L. R., X All., 150.

undoubtedly includes "to kill." The Advocate-General also observed that, "if we look to see what mischief this chapter of the code was intended to provide against, we find that it was certainly not intended to restrict sec. 295 to inanimate objects." He referred to the notes to the Penal Code prepared by the Indian Law Commissioners, published in 1837, in which "Lord Macaulay expressly refers to the slaughter of a cow in a sacred place at Benares as being a very serious matter and likely to lead to tumult, outrage, and even insurrection, and treats that as one of the offences for which the Commissioners had provided in this chapter."¹ As to the sacred character of the bull he quoted Menu, Chapter VIII, sl. 242 (Colebrooke's Digest, Vol. II, p. 370). And the Learned Counsel further contended that the evidence showed that those who had dedicated the bull and set it at large, still retained such a "property" in the animal as to make it capable of being the subject of theft, criminal misappropriation, or mischief.²

The judgment of the Court was delivered by Norris, J. The learned Judge followed the decision in *Queen-Empress v. Imam Ali*, and held that the bull is not an "object" within

Judgment of
the High Court
delivered by
Norris, J.

¹ In Note J, the Commissioners say:—"We have prescribed a punishment of great severity (the proposed punishment was rigorous imprisonment for a term which might extend to seven years) for the intentional destroying or defiling places of worship, or of objects held sacred by any class of persons. No offence in the whole Code is so likely to lead to tumult, to sanguinary outrage, and even to armed insurrection. The slaughter of a cow in a sacred place at Benares in 1809 caused violent tumult, attended with consider-

able loss of life. The pollution of a mosque at Bangalore was attended with consequences still more lamentable and alarming. We have, therefore, empowered the courts in cases of this description to pass a very severe sentence on the offender." See I. L. R., 17 Cal., p. 859.

² Compare Mitra Misra's remarks as to the customary right of guardianship of a dedication over things the ownership of which he has renounced by dedication. Para. 40, Chap. VIII (sec. 10).

the meaning of sec. 295, and consequently, the killing of the bull was not a "destroying" within the meaning of the same section. The learned Judge could not agree with the Advocate-General that Edge, C. J., had either misapprehended or misapplied the rule of *ejusdem generis* in constructing this section, and he did not think that the passages cited from Maxwell on Statutes supported the contention. The learned Judge thought "that by the word 'object' the Legislature meant something '*ejusdem generis*' with a place of worship, such as an idol, or a picture which was the subject of litigation in *Gossamee Sree Greedharjee v. Rumunlolljee Gossamee*;¹ something that is capable of 'destruction' in the sense in which that word is ordinarily used, or of 'damage' or of 'defilement.' Had the Legislature intended to make the killing of a dedicated bull an offence under sec. 295, I think that they would have used language clearly expressing that intention." Then referring to Lord Macaulay's note referred to above, the learned Judge pointed out "'*what caused the violent tumult at Benares in 1809*' was not the slaughter of the cow, but its slaughter in a sacred place. The naming of two instances, one the defilement or pollution of a sacred place, the other the pollution of a place of worship, and then the use of the words 'cases of this description,' so far from helping the learned Advocate-General's contention seems to me (Norris, J.) to militate against it."

Norris, J., also held that the bull was not "moveable property" within the meaning of secs. 378 and 403, Indian Penal Code, and could not therefore be the subject of theft, or of criminal misappropriation. In his opinion it was also "property" within the meaning of sec. 425, Indian Penal Code, and could not therefore be the

¹ L. R., 16 I. A., 137; I. L. R., 17 Cal., 3.

subject of mischief. For these conclusions the learned Judge relied upon the Allahabad decisions (*Queen-Empress v. Bandhu*¹ and *Queen-Empress v. Nihal*),² and failed to see anything in the judgment in the Madras case (*Queen-Empress v. Nulla*³ cited by the Advocate-General) "in the least degree impeaching or questioning the correctness of the law laid down by Straight, J.," in the above Allahabad decisions. Norris, J., did not think that "the fact that the bull in this case still receives some attention from the Rajbari cowherd, and is daily fed by him by the direction of his employers, is at all inconsistent with a total surrender by those who set him at liberty of all their rights as proprietors." The person who performed the *sraddha* might regard it as a moral duty to feed a bull after it has been set at liberty, and if the villagers did not use it for breeding purposes without asking his permission, Norris, J., thought that it was only a matter of courtesy on their part, and ought not to be construed as evidence of any property in the animal remaining in those who set him at large.

Lastly, having regard to the evidence in the case, the learned Judge relying upon Mr. Kilby's argument, held that "if the killing of the bull was a 'destroying,' and if the bull was an 'object' within the meaning of sec. 295, Indian Penal Code, it was not proved that the accused persons destroyed that object with the intention of thereby insulting the religion of any class of persons."

* * * *

¹ I. L. R., 8 All., 51.

² I. L. R., 9 All., 348.

³ I. L. R., 11 Mad., 145.

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